

176
No. 2672

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

EXAMINER PRINTING COMPANY, a Corporation and WILLIAM RANDOLPH HEARST,

Plaintiffs in Error,

vs.

TAGGART ASTON,

Defendant in Error.

VOLUME I.

(Pages 1 to 224, Inclusive.)

Upon Writ of Error to the United States District Court
of the Northern District of California,
Second Division.

Filed

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Affidavit of Jacob M. Blake on Behalf of the Plaintiff Opposing the Exceptions of the Defendant to the Deposition of George A. McCarthy and to Their Motion to Suppress the Same.....	91
Affidavit of Jacob M. Blake on Behalf of the Plaintiff Opposing the Exceptions of the Defendant to the Deposition of Robert Underwood Johnson and to Their Motion to Suppress the Same.....	93
Affidavit of Jacob M. Blake on Behalf of the Plaintiff Opposing the Exceptions of the Defendant to the Deposition of William J. Wilsey and to Their Motion to Suppress the Same.....	90
Agreement, Dated May 27, 1913, Approved by Sullivan et ux., Addressed to W. J. Wilsey	170
Amended Answer of Examiner Printing Company.....	64
Amended Answer of Examiner Printing Company.....	73
Amended Complaint.....	40

Index.	Page
Answer of Defendant William Randolph Hearst.....	61
Answer of Examiner Printing Company.....	60
Assignment of Errors.....	411
Bill of Exceptions.....	83
Bond on Writ of Error.....	443
Certificate of Clerk U. S. District Court to Transcript of Record.....	445
Certificate of Notary Public to Deposition of George A. McCarthy.....	96
Certificate of Notary Public to Deposition of W. J. Wilsey and Robert Underwood Johnson.....	94
Citation on Writ of Error (Original).....	448
Clerk's Certificate to Judgment-roll.....	83
Complaint.....	1
Complaint, Amended.....	40
Demurrer of Defendant Examiner Printing Company.....	27
Demurrer of Defendant William Randolph Hearst.....	30
DEPOSITION ON BEHALF OF PLAINTIFF:	
Johnson, Robert Underwood.....	316
McCarthy, George A.....	182
Exceptions, Bill of.....	83
Exception No. 1.....	98
Exception No. 2.....	152
Exception No. 3.....	153
Exception No. 4.....	153

	Index.	Page
Exception No. 5.....		154
Exception No. 6.....		154
Exception No. 7.....		160
Exception No. 8.....		160
Exception No. 9.....		165
Exception No. 10.....		166
Exception No. 11.....		166
Exception No. 12.....		175
Exception No. 13.....		175
Exception No. 14.....		175
Exception No. 15.....		176
Exception No. 16.....		176
Exception No. 17.....		177
Exception No. 18.....		177
Exception No. 19.....		177
Exception No. 20.....		178
Exception No. 21.....		179
Exception No. 22.....		179
Exception No. 23.....		180
Exception No. 24.....		181
Exception No. 25.....		182
Exception No. 26.....		183
Exception No. 27.....		184
Exception No. 28.....		185
Exception No. 29.....		186
Exception No. 30.....		188
Exception No. 31.....		229
Exception No. 32.....		252
Exception No. 33.....		255
Exception No. 34.....		258
Exception No. 35.....		263

Index.	Page
Exception No. 36.....	263
Exception No. 37.....	301
Exception No. 38.....	302
Exception No. 39.....	310
Exception No. 40.....	311
Exception No. 41.....	312
Exception No. 42.....	314
Exception No. 43.....	314
Exception No. 44.....	315
Exception No. 45.....	318
Exception No. 46.....	319
Exception No. 47.....	320
Exception No. 48.....	370
Exception No. 49.....	370
Exception No. 50.....	373
Exception No. 51.....	382
Exception No. 52.....	384
Exception No. 53.....	385
Exception No. 54.....	386
Exception No. 55.....	387
Exception No. 56.....	388

EXHIBITS:

Plaintiff's Exhibit—"Terry Map".....	390
Plaintiff's Exhibit No. 11—Letter, Dated March 10, 1915, from Eugene J. Sul- livan to Taggart Aston.....	266
Plaintiff's Exhibit No. 14—Letter, Dated October 14, 1910, from Marsden Man- son to A. F. Martel.....	161
Plaintiff's Exhibit No. 15—Letter, Dated	

Index.

Page

EXHIBITS—Continued:

October 29, 1910, from Eugene J. Sullivan to Marsden Manson..... 162

Plaintiff's Exhibit No. 18—Statement, Dated March 19, 1913, from T. Aston to W. J. Wilsey..... 267

Plaintiff's Exhibit No. 22—Bartell-Manson Report 191

Plaintiff's Exhibit No. 27—Table of Quantities, Norfolk Dam & Res..... 388

Plaintiff's Exhibit No. 39—Extract from "Arizona Gazette" to July 7, 1913.... 314

Plaintiff's Exhibit No. 40—Extract from "Evening World Herald" of July 7, 1913..... 315

Plaintiff's Exhibit No. 41—Extract from "Herald Republican" of July 8, 1913.. 315

Plaintiff's Exhibit No. 44—Certified Copies of Statements of Ownership, etc..... 321

Extract from Decision of Secretary of Interior. 99

Extract from Proceedings of Public Lands Committee 137

Extract from Proceedings of Committee on Public Lands 139

Extracts from Proceedings of Public Lands Committee 155

Extracts from Report of John E. Freeman.... 226

Extracts from San Francisco "Examiner" of Thursday, November 6, 1913..... 259

Extract from San Francisco "Examiner" of November 30, 1913..... 302

Extract from San Francisco "Examiner" December 1, 1913.....	311
Extracts from Washington Edition of San Francisco "Examiner" Dated December 2, 1913.	111
Further Evidence Introduced for Plaintiff, and Further Testimony of Plaintiff.....	189
Further Testimony of Plaintiff.....	225
Instructions of Court to Jury.....	395
Judgment on Verdict.....	81
Letter, Dated May 27, 1910, from Army Engineers to Secretary of Interior.....	104
Letter, Dated February 26, 1913, from "T. A." to W. J. Wilsey.....	265
Letter, Dated March 10, 1913, from Eugene J. Sullivan to Taggart Aston.....	115
Letter, Dated April 9, 1913, from H. L. Turck to C. Leary & Co.....	275
Letter, Dated April 23, 1913, from W. J. Wilsey to Mr. Aston.....	274
Letter, Dated April 25, 1913, from T. Aston to W. J. Wilsey.....	276
Letter, Dated April 28, 1913, from H. L. Turck to Leary & Co.....	278
Letter, Dated April 29, 1913, from H. L. Turck to W. J. Wilsey (Part of).....	279
Letter, Dated May 8, 1913, from W. J. Wilsey to J. G. Wright	289
Letter, Dated May 10, 1913, from W. J. Wilsey to Plaintiff	285
Letter, Dated May 15, 1913, from T. Aston to W. J. Wilsey.....	286
Letter, Dated May 23, 1913, from H. L. Turck to W. J. Wilsey	290

Index.	Page
Letter, Dated May 24, 1913, from G. L. Wright to Mr. Wilsey.....	292
Letter, Dated May 28, 1913, from Sierra Blue Lakes Water & Power Co. to Committee on Public Lands	121
Letter, Dated June 14, 1913, from Plaintiff to W. J. Wilsey.....	292
Letter, Dated June 24, 1913, from T. Aston to Scott Ferris.....	122
Letter, Dated July 1, 1913, from Scott Ferris to Taggart Aston	129
Letter, Dated July 1, 1913, from Taggart Aston to H. H. Wadsworth.....	376
Letter, Dated July 1, 1913, from H. H. Wads- worth to Taggart Aston.....	377
Letter, Dated July 2, 1915, from Taggart Aston to Scott Ferris.....	130
Letter, Dated July 8, 1913, from Scott Ferris to Taggart Aston.....	131
Letter, Dated July 8, 1913, from Taggart Aston to Scott Ferris	132
Letter, Dated July 15, 1913, from Scott Ferris to Taggart Aston	136
Letter, Dated July 16, 1913, from Taggart Aston to George E. Chamberlain.....	245
Letter, Dated July 31, 1913, from Scott Ferris to Taggart Aston	136
Letter, Dated August 6, 1913, from R. W. Perks to W. J. Wilsey.....	293
Notice of Exceptions to Deposition and of Mo- tion to Suppress the Same.....	85

Index.	Page
Notice of Exceptions to Deposition and of Motion to Suppress the Same.....	86
Notice of Exceptions to Depositions and to Motion to Suppress the Same.....	88
Notice of Motion to File Amended Answer....	63
Notice of Motion to Strike Out Parts of Com- plaint.....	32
Order Allowing Plaintiff to File Amended Com- plaint	59
Order Allowing Writ of Error.....	442
Order, Dated May 27, 1910, of Secretary of In- terior, Re Permit of May 11, 1908.....	106
Order Enlarging Time to August 9, 1915 for Fil- ing Record	450
Order Enlarging Time to September 9, 1915 for Filing Record	452
Order Enlarging Time to October 8, 1915 for Fil- ing Record	453
Order Enlarging Time to November 8, 1915, for Filing Record	454
Order Granting Defendant Leave to File Amended Answer.....	72
Order Granting Motion to Strike Out Parts of Complaint, as to Specifications 1 to 9, Inclu- sive, etc.	39
Order Overruling Demurrers to Complaint, Sub- mitting Motion to Strike, etc.....	38
Order Settling and Allowing Bill of Exceptions	408
Petition for Writ of Error.....	409
Power of Attorney, May 16, 1913, Sullivan et ux., to Keatinge et al.....	167

Index.	Page
Proceedings Had Before Secretary of Interior, May 26, 1908.....	101
Report of Advisory Board of Army Engineers, May 26, 1910.....	100
Report on Properties of Sierra Blue Lakes Water & Power Co.....	296
Return of Service of Writ.....	26
Stipulation and Order Allowing Plaintiff to File Amended Complaint	59
Stipulation as to Matter Appearing on Cover of Bartell-Manson Report	225
Stipulation Relative to Bill of Exceptions.....	407
Summons	24
Telegram, Dated June 9, 1913, from Sierra Blue Lakes Water & Power Co. to Scott Ferris..	122
Telegram, Dated June 14, 1913, from Taggart Aston to William Kent.....	120
Telegram, Dated June 22, 1913, from Eugene J. Sullivan to Scott Ferris.....	116
Telegram, Dated June 27, 1913, from Eugene J. Sullivan to Scott Ferris.....	118
Telegram of June 28, 1913, from Public Lands Committee to Eugene J. Sullivan.....	137
Telegram, Dated June 28, 1913, from Scott Fer- ris to Eugene J. Sullivan.....	119
Telegram, Dated June 28, 1913, from Scott Fer- ris to Eugene J. Sullivan.....	128
Telegram, Dated June 30, 1913, from Taggart Aston to Scott Ferris.....	129
Telegram, Dated July 6, 1913, from Taggart Aston to Scott Ferris.....	130

Index.	Page
TESTIMONY ON BEHALF OF PLAINTIFF:	
ASTON, TAGGART	172
ASTON, TAGGART	244
ASTON, TAGGART (recalled).....	255
ASTON, TAGGART (in rebuttal).....	387
BADE, WILLIAM (in rebuttal).....	380
BARENDT, ARTHUR H.....	254
BEHNEMAN, STANLEY	187
DUNNIGAN, J. S.....	186
KEATINGE, RICHARD HARTE.....	166
KEATINGE, RICHARD HARTE (Re- called)	180
MILLER, CLEMENT H.....	181
SULLIVAN, EUGENE J.....	98
TESTIMONY ON BEHALF OF DEFEND- ANTS:	
GRUNSKY, C. E.....	334
Recross-examination	354
MANSON, MARSDEN	373
Verdict	80
Writ of Error (Original).....	446

*In the District Court of the United States for the
Northern District of California.*

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY (a Cor-
poration), and WILLIAM RANDOLPH
HEARST,

Defendants.

Complaint.

The plaintiff for a cause of action against the defendants complains and alleges:

(1) That the plaintiff is an alien and was born in foreign parts, and is, and at all the times hereinafter mentioned was, a citizen of the Kingdom of Great Britain and a subject of the King of Great Britain; and is and was, at all the times herein mentioned, a resident and an inhabitant of the State of California, residing at Berkeley, in the County of Alameda in said State, in the northern district thereof; that plaintiff for more than fifteen years last past has been continuously and actively engaged in the practice of his profession as a civil engineer in different parts of the English-speaking world and is, and was at all the times hereinafter mentioned, so engaged in practicing his said profession in the United States of America.

(2) That the defendant, Examiner Printing Company is, and at all the times hereinafter mentioned was, a corporation, duly organized and existing under and by virtue of the laws of the State of

the United States of America, upon the application of said City of San Francisco therefor, granted to said city a permit for a right of way and franchise to build, construct and maintain a dam and reservoir in the Hetch Hetchy Valley in said county and Eleanor in Tuolumne County in the State of California and also for the right of way and franchise to build, construct and maintain a dam and reservoir in the Hetch Hetchy Valley in said county and state last aforesaid, upon the condition and with the express understanding and agreement on the part of said City of San Francisco that it would develop the Lake Eleanor site to its full capacity before beginning the development of the Hetch Hetchy site and that the development of the latter would be begun only when the needs of the City and County of San Francisco and adjacent cities, which may join it in obtaining a common water supply, may require such further development, and that said permit was, and ever since has been, and now is, known as the "Garfield permit": That thereafter and on or [3] about the 25th day of February, 1910, the then Secretary of Interior of the United States of America issued and caused to be duly served upon said City of San Francisco an order to show cause why that portion of said Garfield permit granting a right of way and franchise to said City of San Francisco to build, construct and maintain said Hetch Hetchy dam and reservoir should not be revoked and cancelled and why the Hetch Hetchy Valley and reservoir site should not be eliminated from said Garfield permit that thereafter

and on the 12th day of May, 1910, the then Secretary of the Interior requested the Secretary of War to appoint a Board of Army Engineers to act as an advisory board in the determination of the questions to arise upon the hearing of said order to show cause: That thereafter and on the 27th day of May, 1910, the then Secretary of the Interior made an order granting said City of San Francisco to and including June 1, 1911, within which the said City of San Francisco should answer said order to show cause why Hetch Hetchy dam and reservoir site should not be eliminatd from said Garfield permit; that said order of continuance last aforesaid was granted upon the condition and for the purpose, as stated therein, following to wit; "Said continuance and postponement is granted for the purpose of enabling said City and County of San Francisco to furnish necessary data and information to enable the Department of the Interior to determine whether or not the Lake Eleanor basin and watershed contributory, or which may be made contributory thereto, together with all other sources of water supply available to said city, will be adequate for all present and reasonable prospective needs of said City of San Francisco and adjacent bay cities without the inclusion of the Hetch Hetchy Valley as a part of said sources of supply, and whether it is necessary to include said Hetch Hetchy Valley as a source of municipal water supply for said City and County of San Francisco [4] and bay cities.

"In granting said postponement and continuance it is understood said City and County of San Fran-

cisco will at once proceed, at its own expense and with due diligence, to secure and furnish to said Advisory Board of Army Engineers all necessary data upon which to make the determination aforesaid, and pending the hearing upon said order to show cause, no attempt shall be made by said city or any of its officers or agents to acquire, as against the United States, any other or different rights to the Hetch Hetchy Valley than it now has under said permit, and that no effort shall be made by said city to develop said Hetch Hetchy Valley site.”

4. That thereafter from time to time the then Secretary of the Interior granted other and further continuances of said hearing until the final date for the submission of the case of said City of San Francisco in answer to said order to show cause was fixed for the first day of August, 1912, and that thereafter the final hearing was held before the then Secretary of the Interior in Washington in the District of Columbia on November 25th to 30th, inclusive, 1912: That there was appropriated by the Congress of the United States of America, the whole sum of \$12,000 and no more, with which to pay the expenses of the said Advisory Board of Army Engineers; that it then and there became the sacred duty and solemn obligation of said City of San Francisco in good faith and with strict fidelity to furnish said Advisory Board of Army Engineers full, accurate and complete data of and concerning all sources of water supply available to said city which, together [5] with that to be drawn from the Lake Eleanor basin and watershed contributory,

or which might be made contributory thereto, would be adequate for all present and reasonable prospective needs of said City of San Francisco and adjacent bay cities and that in the months subsequent to June 30th, 1912, said City of San Francisco, at the cost of several hundred thousand dollars did furnish to said Advisory Board of Army Engineers what purported to be such data and reports, which was and is known as the "Freeman Report": That theretofore and in the month of April, 1912, the then city engineer of said city of San Francisco, acting pursuant to the letter and spirit of the terms and conditions imposed as aforesaid upon said city to furnish the data and reports aforesaid upon other sources of water supply available to said city caused a full, careful, painstaking and complete survey and report to be made by him by a skillful and competent assistant in his employ, of the sources of domestic water supply available to said city from the Mokelumne River in said State of California: That said survey and report was accompanied by numerous maps and diagrams showing the location and extent of said sources of domestic water supply and the details of the construction works by which the same could be economically developed; and said report was fully compiled and finally revised to the point that it was ready to be typed and put into permanent form to be furnished as proper data to said Advisory Board of Army Engineers; that in this condition it bore the endorsement of the then city engineer of said City of San Francisco to the effect substantially, that, during the critical period

from August, 1907, to December, 1909, there was available from Mokelumne River sources four hundred thirty-two million gallons of water daily draft to said City of San Francisco, provided all reservoirs were secured and utilized, and that these sources, under this assumption, [6] were sufficient to meet the demands of the region around the bay of San Francisco when reinforced from a full development of Lake Eleanor: That after the hearing before the then Secretary of the Interior in November, 1912, as aforesaid and on or about to wit, March 1st, 1913, the then Secretary of the Interior refused to base any official action upon the report of said Advisory Board of Army Engineers or upon the data and reports furnished by said City of San Francisco in answer to said order to show cause why the Hetch Hetchy Valley and reservoir should not be eliminated from the Garfield permit, upon the ground, among others, that the Congress of the United States of America possessed the exclusive power and jurisdiction to grant an irrevocable right of way and franchise such as was included in the Garfield permit. That thereafter and on the — day of March, 1913, Congress of the United States of America convened in Washington, in the District of Columbia, in special session and immediately thereupon the City of San Francisco sent a delegation of special agents to attend upon said session of Congress and to await upon and appear before the committee of Congress having jurisdiction of the public lands of the United States in behalf of its application for the right of way fran-

chises and special privileges and immunities necessary to be obtained in order to acquire the Hetch Hetchy dam and reservoir for and in behalf of the special interest of the City of San Francisco and of the inhabitants thereof for the uses and purposes aforesaid, and that said city of San Francisco maintained said agents and its lobby as aforesaid in the City of Washington during the balance of said year 1913 in behalf of its application for said special privileges as aforesaid; that at various times during the year, 1913, the respective congressional committees having jurisdiction of matters pertaining to the public [7] lands of the United States held public hearings upon bills introduced in Congress, having for their object the granting to said City of San Francisco the said right of way, franchises and special privileges to use the Hetch Hetchy dam and reservoir site for uses and purposes aforesaid.

5. That on or about the month of June, 1912, the plaintiff herein was employed as a consulting civil engineer to make a survey in the field and to prepare notes, maps, profiles and a report of and concerning the availability of the Mokelumne River sources in the Sierra Nevada mountains in California, aforesaid as an available course of water supply for irrigation and hydro-electric purposes, and in the course his investigations under such employment then and there discovered that, in extent and adequacy, said sources would economically supply the City of San Francisco with at least 350,000,000 gallons of pure mountain water for domestic use per day; that thereafter and on or about the month

of June, 1913, plaintiff discovered that the said availability and adequacy of said Mokelumne sources of water supply, when used in connection with the Lake Eleanor basin and watershed, to supply all present and reasonably prospective needs of said City of San Francisco and adjacent bay cities were and had been since 1912, intimately and accurately known to the city engineers of the City of San Francisco by and through said report prepared by the then city engineer in April, 1912, but that neither the facts contained therein nor the report itself had been furnished to said Advisory Board of Army Engineers; that acting in performance of the duty owing by civil engineers to their profession, plaintiff on or about the 14th day of June, 1913, voluntarily and upon his own initiative, but with the advise and [8] consent of his clients, advised a member of the Committee on Public Lands of the House of Representatives of the United States of America substantially to the effect as aforesaid and that, on or about the 23d day of June, 1913, plaintiff, acting from the motives and with the purposes aforesaid, voluntarily and upon his own initiative, but with the advice and consent of his clients, advised the chairman of said Public Lands Committee, as follows:

(a) "That 350 Million gallons of pure mountain water can be economically supplied to San Francisco from 430 square miles of Mokelumne River Upper Catchment, at elevation between 2200 and 10,000 feet.

(b) "That the cost of developing this supply

will be much less than that of the Hetch Hetchy project.

(c) “That this supply alone will be sufficient for San Francisco and Bay Cities’ needs for next century.

(d) “That this supply combined with Spring Valley and Lake Eleanor will supply San Francisco and Bay Cities for 180 years.

(e) “That it can be developed from storage which will not conflict with any irrigation interests, or with the use, by the Nation, of the National Park of Hetch Hetchy.

(f) “That it will give the people of San Francisco as pure a mountain supply as “Hetch Hetchy—and will not involve nearly as large an initial expenditure of certain works as proposed for Hetch Hetchy, many of which will be useless for city supply for some seventy years, and upon which the rate payers of San Francisco will have to pay fixed charges amounting to several times the original cost before they come into full use. [9]

(g) “That from 90,000 to 100,000 continuous H. P. or 140,000 to 160,000 salable H. P. will be economically available for municipal purposes from the fall on the Mokelumne River proposed conduits. That the city, instead of having to supply hydro-electric power free, as they will have to do to irrigationists in the Hetch Hetchy project, would obtain from the hydro-electric power on the Mokelumne River a gross annual revenue of from \$5,000,000 to \$6,500,000 or sufficient to at least pay the fixed charges on the cost of installing the whole supply

as well as the purchase of the Spring Valley System.”

And further represented and stated to said chairman of said committee, that said City of San Francisco has suppressed from said Board of Army Engineers a carefully considered report made by and under the direction of its then city engineer in April, 1912, wherein and whereby it was fully and accurately shown that an amount of water amounting approximately to the amount claimed as above by the plaintiff herein could be supplied to San Francisco from the Molkelumne River sources and which, combined with Lake Eleanor was sufficient for all present and reasonably prospective needs of said City of San Francisco and adjacent bay cities; that thereupon and as a result of said communications an adjourned meeting of said Committee on Public Lands of said House of Representatives was set for July 7, 1913, for the purpose of hearing and determining the facts aforesaid and to give opportunity to parties then in the City of San Francisco to appear and testify regarding the same before said committee in Washington; that thereafter one Eugene J. Sullivan, President of the Sierra Blue Lakes Water and Power Company, against the wishes of plaintiff and his clients, appeared before said Committee on Public Lands of the House of Representatives and testified to the best of his ability concerning the facts which were within the particular [10] knowledge of plaintiff; that said Committee on Public Lands sought to discredit the testimony of the said Sullivan upon the ground of his personal interest in the said Sierra Blue Lakes Water and Power

Company, and because said company owned water rights which would have to be purchased by said City of San Francisco if it obtained its water supply from the Mokelumne sources; that thereafter and during all the rest of said special session of Congress and up to and until the date that said bill granting said right of way, franchise and special privileges to the City of San Francisco was passed by the Congress of the United States of America, it became and was the sole object of said City of San Francisco acting by and through its agents and lobbyists to discredit the statements made by and furnished to said Committee on Public Lands of said House of Representatives by the plaintiff herein by attaching the interest of said plaintiff to that of the said Sullivan; that during none of the time herein mentioned was the plaintiff in the employ of the said Sullivan or acting by or under his direction or control, nor did he have any pecuniary interest in the sale of properties of the Sierra Blue Lakes Water and Power Company, located on the Mokelumne River, to said City of San Francisco, and that he, the plaintiff, was actuated in furnishing the statements and reports to said Committee on Public Lands concerning the availability and adequacy of said Mokelumne sources of water supply for said City of San Francisco from the pure motives and with the honest purposes aforesaid and no other; that no fact or circumstances were proved or offered to be proved before any of the committees of Congress which would show otherwise, or which would particularly show that plaintiff, alone, or in combination or conspiracy with

the said Sullivan or any other person pretended to have an opposition water supply to sell to the City of [11] San Francisco, or that plaintiff alone, or in combination or conspiracy with the said Sullivan or any one else, was engaged in an attempt to perpetrate a gross fraud or any fraud upon the Government of the United States, or the City of San Francisco or upon any other person or persons, interest or interests, corporation or corporations public or private.

6. That on or about September 3d, 1913, the said Committee on Public Lands of the House of Representatives having favorably reported the bill designated "bill H. R. 7207 entitled 'A Bill Granting to the City and County of San Francisco certain rights of way in, over and through certain public lands, the Yosemite National Park, and Stanislaus National Forest and certain lands in the Yosemite National Park, the Stanislaus National Forest, and the public lands in the State of California, and for other purposes' " being a bill for an act of Congress, granting said City of San Francisco said right of way, franchises and special privileges to construct, maintain and operate said dam and reservoir in said Hetch Hetchy Valley for domestic supply and hydro-electric power purposes as aforesaid, the same was passed by the House of Representatives aforesaid; and thereafter and on the — day of December, 1913, said bill came up for consideration and debate in the Senate of the United States under a rule requiring said debate to be closed and a vote to be taken thereon on the — day of December, 1913,

that upon receiving notice of the time said bill would be up for debate in said Senate of the United States the defendant the Examiner Printing Company in the special interest of said City of San Francisco and for the purpose of increasing the power, prestige and influence of the daily newspaper printed and published by it in said city—The San Francisco Examiner—and to increase and augment the value of the good will of said newspaper and of [12] said Examiner Printing Company, and the defendant, William Randolph Hearst, in the special interest of the City of San Francisco for the purpose of augmenting his own individual personal and political power and influence in the different parts of the United States of America as aforesaid and in the interest of further increasing the value of the goodwill of his newspaper interests in said City of San Francisco conceived and laid out the plan of issuing a special Washington edition of San Francisco Examiner by printing, publishing and circulating in the City of Washington, in the District of Columbia, and elsewhere in the United States of America and throughout the world, an issue of said newspaper to be known as The San Francisco Examiner which should contain no other subject matter, news, dispatches, special articles or other printed reading matter than that pertaining and favorable to and which tended to promote the passage by the Senate of the United States of America of said bill H. R. No. 7207; that the said special Washington edition of the San Francisco Examiner was thereupon and on December 2, 1913, printed, published and issued

in the City of Washington in the District of Columbia and consisted of sixteen pages entirely devoted to the favorable consideration of the bill known as bill H. R. No. 7207; that plaintiff is informed and believes and therefore alleges that the said Washington edition of said San Francisco Examiner was without precedent in the following and each of the following particulars, that is to say; that it was the first newspaper to be wholly, edited, printed and published under the direct personal control, management and supervision of the defendant, William Randolph Hearst; that it is the only newspaper ever issued at the capital of the United States of America for the express and only purpose of directly influencing the action of Congress of the United States in favor of the passage of a bill granting rights of [13] way, franchises and special privileges and immunities belonging to all of the people of the United States in behalf of a special interest while the debate upon the passage of said bill was in progress; that it was the first and only paper, issued under such circumstances, to contain what purports to be signed statements and interviews by the Vice-president of the United States of America, and by three members of the Cabinet of the President of said United States, and by the speaker of the House of Representatives of the United States, and by a Representative in Congress and by a large number of members of the Senate of the United States expressing favorable sentiments in behalf of and endorsing the passage of such a bill at the time when said bill was under discussion in the Congress of the United States; also

that it was the only paper that was ever printed and published in the Capital of the United States of America, for the purpose and under the circumstances herein before stated, by a newspaper publisher or proprietor which did not own, print or publish, a newspaper in said capital; that plaintiff is informed and believes and therefore alleges that the reportorial and mechanical work upon said paper was done by members of the staff of other and different newspapers, owned or controlled by said defendant, William Randolph Hearst, that the San Francisco Examiner; and that, as plaintiff is informed and believes and therefore alleges, said signed interviews and statements with the officers, agents and trustees of the government of the United States was obtained by and through the personal influence of the defendant William Randolph Hearst, and of his attorneys, emissaries and agents brought to the capital of the United States from New York and Chicago and other places where the said defendant operates and conducts his newspaper [14] enterprises by the said defendant, William Randolph Hearst, and at his expense and at the expense of the defendant, Examiner Printing Company, for the purpose of obtaining said signed special articles and interviews and of editing, printing and publishing said special Washington edition of said San Francisco Examiner as aforesaid; that at and prior to the time said bill came up for debate in the Senate of the United States, considerable public attention and interest throughout the different parts of the United States had become centered upon the obviously great

efforts that were being made by the agents and lobbyists maintained at Washington as aforesaid by said City of San Francisco in behalf of the passage of said bill and much public criticism had been and was indulged in, between the months of June and December, 1913, by the press of the United States over and concerning the suppression from the Advisory Board of Army Engineers of the favorable report of the City Engineer of said San Francisco, prepared in April, 1912, as aforesaid, showing the availability and adequacy of the Mokelumne source of water supply for said City of San Francisco; that said suppressed report was known to the press and the public of the United States as the "Bartell Report" and the "Bartell-Manson Report" and that the fact of the suppression of said report was first made public by and through the statements and communications made by the plaintiff as aforesaid and was first publicly testified to before the Committee on Public Lands of the House of Representatives by the said Eugene Sullivan on the 7th day of July, 1913; that no reference was made in said special Washington edition of said San Francisco Examiner by said defendants, Hearst and Examiner Printing Company, to said Bartell-Manson Report or to the fact of its suppression and the concealment [15] thereof from the Advisory Board of Army Engineers by said City of San Francisco; but that on the other hand said defendants vilified personally said Eugene Sullivan and sought to discredit the testimony of said Sullivan by charging him with being a thief and by printing and publishing on the

sixth page of said special Washington edition of said San Francisco "Examiner" under the following headline in black-faced type

"THIEF WITH THE NATURE LOVERS"

the following statement also in black-faced type attributed to a congressman of the United States of America from the State of California:

"I want to state here and now that I have read this literature put out by these people (meaning the statements of the plaintiff and the said Eugene Sullivan concerning the suppression of the "Bartell-Manson Report" as aforesaid and the statement of the plaintiff and the said Sullivan that the said Mokelumne sources of water supply were reasonably available and adequate for all present and reasonably prospective needs of said City of San Francisco and the adjacent bay cities).

It has only one foundation in fact and that foundation is the letters of this man Sullivan (meaning the said Eugene J. Sullivan) whom we proved in the hearings in the House (meaning the House of Representatives) to be a thief and a man who ought to be in the penitentiary."

That by reason of all of the foregoing special and particular facts and circumstances surrounding the printing and publishing of said special Washington edition of said San Francisco Examiner said newspaper became and was an object of great interest and attention in the City of Washington and elsewhere throughout the United States and was widely circulated and read throughout all [16] of said places; that said newspaper by reason of the fact

that it contained no transient or fugitive news, but was entirely devoted to said Hetch Hetchy project possessed a permanent value and held a continuing interest which has had the effect to cause the copies thereof to be preserved by those into whose possession they came; that many copies thereof were obtained by agents and officers of said City of San Francisco and the same have been offered and put into circulation from time to time since said 2d day of December, 1912.

7. That on said 2d day of December, 1913 and at the City of Washington aforesaid the said defendants, William Randolph Hearst, as the managing editor in charge of, and the said defendant Examiner Printing Company as the proprietor and publisher of said special Washington edition of said San Francisco Examiner did print and publish in said newspaper and did thereby circulate in and throughout the said City of Washington and elsewhere throughout the United States of America and the English-speaking world at large, of and concerning the plaintiff the following defamatory and libelous statements, to wit:

“INSPIRATION OF OPPOSITION.

“During the Senate Committee hearing it came out that much of the inspiration for gross and careless aspersions made on the City of San Francisco, the army engineers and engineers generally, came from two men named Sullivan and Aston, who had pretended to have an opposition water supply to sell to San Francisco.

“But at the House hearing it had been so

thoroughly developed that the Sullivan-Aston scheme was just a gross fraud that Mr. Johnson got very angry when Sullivan was referred to as his friend, though he admitted receiving information on which he had attacked the Hetch Hetchy project as a bad jobbery from Sullivan's man, Aston." [17]

8. That by the use and publication of said words and language, used and published by said defendants, and each of them as aforesaid, on the seventh page of said special Washington edition of said newspaper and opposite the publication of the words and language heretofore set out charging the said Eugene J. Sullivan to be "a thief" and "a man who ought to be in the penitentiary," they and each of them intended to charge and assert, and to be understood as charging and asserting, and were by the readers of said newspaper in fact understood as charging and ascertaining (1) that this plaintiff was guilty of the fraudulent, intent, purpose and design to combine and conspire with the said Eugene J. Sullivan to perpetrate a gross fraud upon the City of San Francisco by and through the sale to said city of a worthless opposition water supply and that said plaintiff did pretend to have such opposition water supply to sell to said city and that, because he pretended with said Sullivan to have such opposition water supply to sell to said city he was led to and did make gross and careless aspersions on said City of San Francisco, the Advisory Board of Army Engineers and engineers generally (meaning thereby to refer to the statements that had been made before various congressional hearings, upon the authority of plaintiff

concerning the suppression of said Bartell-Manson Report by said city of San Francisco);

(2) That this plaintiff had been proved at the hearing before the Committee on Public Lands of the House of Representatives to be guilty of combining and conspiring with said Eugene J. Sullivan to perpetrate and of perpetrating a gross fraud either upon said committee, or upon the House of Representatives, or upon Congress, or upon the City of San Francisco, or upon some other persons or persons, corporation or corporations, public or private, heretofore unnamed; (3) that this plaintiff was the tool, sycophant [18] or hireling of the said Eugene J. Sullivan, and, therefore, of "a thief" and "of a man who ought to be in the penitentiary" and that as such he would stultify himself and prostitute his personal honor and professional reputation to do the servile bidding of such an employer without reference to truth and right; and that he had so demeaned himself and disgraced his profession in a certain course of conduct with one Mr. Johnson (meaning Robert Underwood Johnson of New York City), by lying and misrepresenting facts in connection with the Hetch Hetchy project at the bidding and behest of the said Sullivan:

That said charges so made and published by the defendants and each of them and so understood, and by them and each of them intended to be understood by the readers of said special Washington edition of said San Francisco "Examiner" were, and are in every particular false, misleading, defamatory, libelous, unprivileged, and without excuse and that

they had a tendency to and did and do expose plaintiff to hatred, contempt and obloquy by imputing to him the basest, meanest and most untrustworthy traits of character as a man, neighbor and citizen and had a tendency to and did and do injure him in his good name, reputation and business occupation and profession and that said charge was published and circulated by said defendants and each of them with express malice on the part of each of said defendants, and with the design and intent on the part of each of them to outrage the feelings of plaintiff and to cause him to be shunned and avoided by his fellow citizens, and to destroy his reputation and character for honesty and integrity and to hold him out to the people of the United States and elsewhere as being devoid of honesty and integrity and by reason of an alleged business association with a man stigmatized as a "thief" and "who ought to be in the penitentiary" as being unworthy of any personal or professional trust or confidence, and to injure him in his good [19] name, reputation, business, occupation and profession.

9. That plaintiff has sustained damage by reason of said publication in the sum of One Hundred Thousand Dollars.

WHEREFORE, plaintiff demands judgment against the defendants and each of them in the sum on One Hundred Thousand Dollars.

JACOB M. BLAKE,
Attorney for Plaintiff. [20]

State of California,

City and County of San Francisco,—ss.

Taggart Aston, being first duly sworn, deposes and says:

That he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated on his information or belief, and as to those matters that he believes it to be true.

TAGGART ASTON.

Subscribed and sworn to before me this 24th day of July, 1914.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California. [21]

[Endorsed]: Filed July 24, 1914. By Walter B. Maling, Clerk. [22]

Summons.

UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California, Second Division.

TAGGART ASTON,

Plaintiff,

vs

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST,

Defendants.

Action brought in said District Court and the Complaint filed in the office of the Clerk of said District Court in the City and County of San Francisco.

JACOB M. BLAKE,
Plaintiff's Attorney.

The President of the United States of America,
Greeting: To Examiner Printing Company, a
Corporation and William Randolph Hearst,
Defendants.

You are hereby directed to appear and answer the Complaint in an action entitled as above brought against you in the District Court of the United States, in and for the Northern District of California Second Division, within ten days after the service on you of this Summons, if served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any money or damages demanded in the Complaint, as arising upon contract, or he will apply to the Court for any other relief demanded in the Complaint.

Witness the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 24th day of July in the year of our Lord one thousand nine hundred and fourteen and of our independence the one hundred and thirty-ninth.

[Seal]

By WALTER B. MALING,

Clerk. [23]

Return of Service of Writ.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Summons on the therein-named Examiner Printing Company, a corporation, by handing to and leaving a true and attested copy thereof with a copy of the Complaint attached thereto with W. F. Bogart, Secretary and Treasurer of the Examiner Printing Company, a corporation, personally at San Francisco, San Francisco County, in said District on the 27th day of July, A. D. 1914.

J. B. HOLOHAN,
U. S. Marshal.
By J. W. Grover,
Office Deputy. [24]

United States Marshal's Office,
Northern District of California.

I Hereby Certify, that I received the within Writ on the 24th day of July, 1914, and personally served the same on the 24th day of July, 1914, upon William Randolph Hearst, by delivering to, and leaving with William Randolph Hearst, said defendant named therein personally, at the City of San Francisco, in said District, a true and attested copy thereof, together with a copy of the Complaint, attached thereto.

San Francisco, July 27th, 1914.

J. B. HOLOHAN,
U. S. Marshal.
By J. W. Grover
Office Deputy.

[Endorsed]: Filed July 29, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [25]

In the District Court of the United States for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST,

Defendants.

Demurrer of Defendant Examiner Printing Company.

Now comes the Examiner Printing Company, a corporation, one of the defendants in the above-entitled action, and demurs to the complaint of the plaintiff therein and for grounds of demurrer specifies the following:

1. Said complaint does not state facts sufficient to constitute a cause of action against this defendant.

2. The above-entitled court is without jurisdiction of the subject matter of said action.

3. Said complaint is uncertain in each of the following particulars in that it does not appear therein nor can it be ascertained therefrom:

(a) Where in the State of California the Mokelumne source of water supply is situated;

(b) By whom the plaintiff herein was employed

as a consulting engineer, as alleged in paragraph V of said complaint;

(c) Who were the clients or any of the clients of the plaintiff referred to in paragraph V of said complaint;

(d) Whether the plaintiff or any of the clients of the plaintiff was pecuniarily interested in the sale of the properties of the Sierra Blue Lakes Water and Power Company, or any thereof [26] to the City and County of San Francisco;

(e) Whether the plaintiff or any of the clients of the plaintiff was pecuniarily interested in any opposition water supply sought to be sold to the City and County of San Francisco, or whether the plaintiff or any of the clients had any pecuniary interest in any of the matters set forth in Plaintiff's Complaint;

(f) By whom the Washington edition of the San Francisco Examiner was published or issued, as alleged in paragraph VI, of said complaint;

(g) By whom copies of said Washington edition have been offered or put in circulation from time to time since December 2, 1912, as alleged in paragraph VI of said complaint;

(h) By whom the article set forth in paragraph VI of said complaint was published;

(i) Where in said Washington edition was the article set forth in paragraph VII of said complaint published with reference to the article set forth in paragraph VI thereof.

4. Said complaint is ambiguous in each of the particulars wherein in paragraph 3 hereof it is

alleged to be uncertain.

5. Said complaint is unintelligible in each of the particulars wherein in paragraph 3 hereof it is alleged to be uncertain.

WHEREFORE, this defendant prays to be hence dismissed with its costs herein incurred.

GARRET W. McENERNEY,
Attorney for Defendant, Examiner Printing Com-
pany.

I HEREBY CERTIFY that the foregoing demurrer is in my opinion well taken in point of law and that the same is not [27] interposed for delay.

GARRET W. McENERNEY. [28]

Receipt of a copy of the within Demurrer this 21st day of Aug., 1914, is hereby admitted.

JACOB M. BLAKE,
Attorney for Plaintiff.

[Endorsed]: Filed August 21, 1914. By Walter B. Maling, Clerk. [29]

*In the District Court of the United States for the
Northern District of California, Second Divi-
sion.*

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs

EXAMINER PRINTING COMPANY, a Cor-
poration, and WILLIAM RANDOLPH
HEARST,

Defendants.

Demurrer of Defendant William Randolph Hearst.

Now comes William Randolph Hearst, one of the defendants in the above-entitled action, and demurs to the complaint of the plaintiff therein and for grounds of demurrer specifies the following:

1. Said complaint does not state facts sufficient to constitute a cause of action against this defendant.

2. The above-entitled court is without jurisdiction of the subject matter of said action.

3. Said complaint is uncertain in each of the following particulars in that it does not appear therein nor can it be ascertained therefrom:

(a) Where in the State of California the Mokelumne source of water supply is situated;

(b) By whom the plaintiff herein was employed as a consulting civil engineer, as alleged in paragraph V of said complaint;

(c) Who were the clients or any of the clients of the plaintiff referred to in paragraph V, of said complaint;

(d) Whether the plaintiff or any of the clients of the plaintiff was pecuniarily interested in the sale of the properties of the Sierra Blue Lakes Water and Power Company, or any thereof, to the City and County of San Francisco; [30]

(e) Whether the plaintiff or any of the clients of the plaintiff was pecuniarily interested in any opposition water supply sought to be sold to the City and County of San Francisco, or whether the plaintiff or any of his clients had any pecuniary interest in any of the matters set forth in plaintiff's complaint;

(f) By whom the Washington edition of the San Francisco Examiner was published or issued, as alleged in paragraph VI, of said complaint;

(g) By whom copies of said Washington edition have been offered or put in circulation from time to time since December 2, 1912, as alleged in paragraph VI, of said complaint;

(h) By whom the article set forth in paragraph VI, of said complaint was published;

(i) Where in said Washington edition was the article set forth in paragraph VII, of said complaint published with reference to the article set forth in paragraph VI thereof.

4. Said complaint is ambiguous in each of the particulars wherein in paragraph 3 hereof it is alleged to be uncertain.

5. Said complaint is unintelligible in each of the particulars wherein in paragraph 3 hereof it is alleged to be uncertain.

WHEREFORE, this defendant prays to be hence dismissed with his costs herein incurred.

GARRET W. McENERNEY,
Attorney for Defendant, William Randolph Hearst.

I HEREBY CERTIFY that the foregoing Demurrer is in my opinion well taken in point of law and that the same is not interposed for delay.

GARRET W. McENERNEY. [31]

Receipt of a copy of the within Demurrer this 21st day of Aug., 1914, is here admitted.

JACOB M. BLAKE,
Attorney for Plaintiff.

[Endorsed]: Filed August 21, 1914. By Walter Maling, Clerk. [32]

In the District Court of the United States for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST,

Defendants.

Notice of Motion to Strike Out Parts of Complaint.
To the Plaintiff in the Above-entitled Action and to Jacob M. Blake, Esq., Attorney for said Plaintiff:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the defendants in the above-entitled action will, on Monday, the 24th day of August, 1914, at the hour of 10 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, at the courtroom of the above-entitled court, Post-office Building, Seventh and Mission Streets, in the City and County of San Francisco, State of California, move said Court for an order striking from the complaint in the above-entitled action the following matters:

(1) Commencing on page 2, line 6, with the words: "and that he is," and ending on page 3, line

1, of the complaint, with the words: "or thereabouts."

(2) Commencing on page 5, line 23, with the words: "that there was appropriated by the Congress of the United States of America," and ending on page 5, line 26, with the words: "Army Engineers."

(3) Commencing on page 5, line 26, with the words: "that it then and there became the sacred duty" and ending on page 6, line 4, with the words: "and adjacent bay cities."

(4) Commencing on page 6, line 4, with the words: "And that in the months subsequent," and ending on page 6, line 9, with the words: "Freeman Report." [33]

(5) Commencing on page 6, line 9, with the words: "that theretofore and in the month of April," and ending on page 6, line 18, with the words: "in said State of California."

(6) Commencing on page 6, line 18, with the words: "that said survey and report," and ending on page 6, line 25, with the words: "said Advisory Board of Army Engineers."

(7) Commencing on page 6, line 25, with the words: "that in this condition," and ending on page 7, line 4, with the words: "full development of Lake Eleanor."

(8) Commencing on page 7, line 18, with the words: "and immediately thereupon," and ending on page 7, line 27, with the words: "for the uses and purposes aforesaid."

(9) Commencing on page 7, line 27, with the words: "and that said city," and ending on page 8, line 1, with the words: "aforesaid."

(10) Commencing on page 8, line 9, with the words: "That on or about the month of June," and ending on page 8, line 15, with the words, "hydro-electric purposes."

(11) Commencing on page 8, line 15, with the words: "and in the course of his investigation," and ending on page 8, line 19, with the words, "for domestic use per day."

(12) Commencing on page 8, line 19, with the words: "that thereafter," and ending on page 8, line 30, with the words: "Advisory Board of Army Engineers."

(13) Commencing on page 8, line 30, with the words: "that acting in performance of," and ending on page 9, line 1, with the words: "to their profession."

(14) Commencing on page 9, line 1, with the words: "plaintiff on or about the 14th day of June," and ending on page 9, line 6, with the words: "the effect as aforesaid." [34]

(15) Commencing on page 9, line 7, with the words: "acting from the motives," and ending on page 9, line 9, with the words, "advice and consent of his clients."

(16) Commencing on page 10, line 27. with the words: "that thereafter one Eugene J. Sullivan," and ending on page 11, line 2 with the words, "particular knowledge of plaintiff."

(17) Commencing on page 11, line 2, with the words: "that said Committee on Public Lands," and ending on page 11, line 8, with the words: "the Mokolumne sources."

(18) Commencing on page 11, line 8, with the words: "that thereafter and during the rest of said special session," and ending on page 11, line 17, with the words: "to that of the said Sullivan."

(19) Commencing on page 11, line 23, with the words: "and that he the plaintiff was actuated," and ending on page 11, line 27, with the words: "purpose aforesaid and no other,"

(20) Commencing on page 11, line 27 with the words: "that no fact or circumstances," and ending on page 12, line 2, with the words: "the City of San Francisco."

(21) Commencing on page 12, line 2, with the words: "or that plaintiff alone," and ending on page 12, line 8, with the words; "public or private."

(21a) Commencing on page 12, line 26, with the words: "that up receiving notice," and ending on page 13, line 20, with the words: "said bill H. R. No. 7207."

(22) Commencing on page 13, line 29, with the words: "in the special interest of said city of San Francisco," and ending on page 13, line 4, with the words: "said Examiner Printing Company,"

(23) Commencing on page 13, line 5, with the words: "in the special interest of the City of San Francisco," and ending on [35] page 13, line 10, with the words: "in said City of San Francisco."

(24) Commencing on page 13, line 10, with the words: "conceived and laid out," and ending on page 13, line 20, with the words: "said bill H. R. No. 7207."

(25) Commencing on page 13, line 25, with the

words; "that plaintiff is informed and believes," and ending on page 14, line 1, with the words; "William Randolph Hearst."

(26) Commencing on page 14, line 1, with the words; "that it is the only," and ending on page 14, line 8, with the words: "said bill was in progress."

(27) Commencing on page 14, line 8, with the words; "that it was the first," and ending on page 14, line 18, with the words: "of the United States."

(28) Commencing on page 14, line 18, with the words: "also that it was the only paper," and ending on page 14, line 22, with the words: "in said capital."

(29) Commencing on page 14, line 22, with the words; "that plaintiff is informed and believes," and ending on page 14, line 26, with the words: "than the San Francisco Examiner."

(30) Commencing on page 14, line 27, with the words; "and that as plaintiff," and ending on page 15, line 1, with the words: "William Randolph Hearst."

(31) Commencing on page 15, line 1, with the words: "and of the attorneys," and ending on page 15, line 9, with the words; "San Francisco Examiner as aforesaid."

(32) Commencing on page 15, line 10, with the words; "that at and prior to the time," and ending on page 15, line 16, with the words; "passage of said bill."

(33) Commencing on page 15, line 16, with the words; "and much public criticism had been and was indulged in," and ending on page 15, line 22,

with the words; "for said City of San Francisco."
[36]

(34) Commencing on page 15, line 23, with the words; "that said suppressed report was unknown," and ending on page 15, line 25 with the words: "Bartell-Manson Report."

(35) Commencing on page 15, line 25, with the words; "and that the fact of the suppression," and ending on page 15, line 30, with the words; "on the 7th day of July, 1913."

(36) Commencing on page 15, line 30, with the words; "that no reference was made," and ending on page 16, line 4, with the words: "by said City of San Francisco."

(37) On page 16, line 5, the words; "but that on the other hand."

(38) Commencing on page 16, line 28, with the words: "that by reason of all of the foregoing," and ending on page 17, line 4, with the words; "throughout all of said places."

(39) Commencing on page 17, line 4, with the words; "that said newspaper by reason of the fact," and ending on page 17, line 9, with the words; "into whose possession they came."

(40) Commencing on page 17, line 9, with the words; "that many copies thereof," and ending on page 17, line 12, with the words; "said 2d day of December, 1912."

(41) Commencing on page 19, line 9, with the words; "and that as such he would stultify himself," and ending on page 19, line 11, with the words; "without reference to truth and right."

(42) Commencing on page 19, line 12, with the words; “and that he had so demaned himself,” and ending on page 19, line 16, with the words; “at the bidding and behest of the said Sullivan.”

Said motion will be made upon the ground that the matters above enumerated are and each thereof is irrelevant, immaterial and redundant.

Said motion will be based upon all the records and files in the action. [37]

Dated August 21, 1914.

GARRET W. McENERNEY,
Attorney for Defendants. [38]

Receipt of a copy of the within Demurrer this 21st day of Aug., 1914, is hereby admitted.

JACOB M. BLAKE,
Attorney for Plaintiff.

[Endorsed]: Filed August 21, 1914. By Walter B. Maling, Clerk. [39]

**[Order Overruling Demurrers to Complaint,
Submitting Motion to Strike, etc.]**

At a stated term, to wit, the July term, A. D. 1914, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 24th day of August, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable WILLIAM C. VAN FLEET, Distrist Judge.

No. 15,780.

TAGGART ASTON,

vs.

EXAMINER PRINTING CO. et al.

The demurrers of the defendants to the complaint and the defendants' motion to strike out parts of complaint came on this day to be heard and after arguments by counsel were submitted. The demurrers being fully considered it was ordered that said demurrers be and the same are hereby overruled and that the motion to strike out be taken under consideration for decision. Ordered that defendants may have ten days after notice or decision on said motion within which to answer. [40]

[**Order Granting Motion to Strike Out Parts of Complaint, as to Specifications 1 to 9, Inclusive, etc.**]

At a stated term, to wit, the July term, A. D. 1914, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 31st day of August, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 15,780.

TAGGART ASTON,

vs.

EXAMINER PRINTING CO. et al.

Defendants' motion to strike out parts of the complaint, heretofore heard and submitted, being now fully considered and the Court having filed its memorandum thereon, it was ordered that said motion be and the same is hereby granted as to specifications Nos. 1 to 9, inclusive, and denied as to all other specifications. [41]

*In the District Court of the United States, for
the Northern District of California, Second
Division.*

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation,
and WILLIAM RANDOLPH
HEARST,

Defendants.

Amended Complaint.

Leave of Court first having been obtained to file his Amended Complaint herein, the plaintiff for a cause of action against the defendants complains and alleges;

1. That the plaintiff is an alien and was born in foreign parts, and is and at all the times hereinafter mentioned was, a citizen of the Kingdom of Great Britain and a subject of the King of Great Britain; and is and was, at all the times herein mentioned, a resident of and inhabitant of the State of California residing at Berkeley, in the County of Alameda, in said State, in the Northern District thereof;

that plaintiff for more than fifteen years last past has been continuously and actively engaged in the practice of his profession as a civil engineer in different parts of the English-speaking world and is, and was at all the times hereinafter mentioned, so engaged in practicing his said profession in the United States of America.

2. That the defendant, Examiner Printing Company is, and at all the times hereinafter mentioned was, a corporation, duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the City and County of San Francisco, State of California, and is, and was at all of said times, a citizen and inhabitant of said state and within the jurisdiction of said District Court of the United States for the Northern District of California; that the [42] defendant, William Randolph Hearst, is, and at all the times hereinafter mentioned was, a citizen of the United States and a citizen and resident of the State of New York and an inhabitant of the City of New York in said State.

3. That in the year 1913 and for many years prior thereto the City of San Francisco, in the State of California, was, and had been, engaged in a continuous effort to solicit and obtain large and valuable concessions, franchises, rights of way, and other special privileges and immunities from the Government of the United States of America for the purpose of obtaining a domestic water supply and of owning, developing and maintaining large and valuable power plants to be operated for and on behalf

of the special interest of said City of San Francisco and of the inhabitants thereof, in and upon lands of the said United States, situated in the Sierra Nevada Mountains in the State of California; that on or about the 11th day of May, 1908, the then Secretary of the Interior of the United States of America, upon the application of said City of San Francisco therefor, granted to said city a permit for a right of way and franchise to build, construct and maintain a dam and reservoir for the uses and purposes aforesaid at Lake Eleanor in Tuolumne County in the State of California and also for the right of way and franchise to build, construct and maintain a dam and reservoir in the Hetch Hetchy Valley in said county and state last aforesaid, upon the condition and with the express understanding and agreement on the part of said City of San Francisco that it would develop the Lake Eleanor site to its full capacity before beginning the development of the Hetch Hetchy site and that the development of the latter would be begun only when the needs of the City and County of San Francisco and adjacent cities, which may join with it in obtaining a common water supply, may require such further development; [43] and that said permit was and has been, and now is, known as the Garfield permit"; that thereafter and on or about the 25th day of February, 1910, the then Secretary of Interior of the United States of America issued and caused to be duly served upon said City of San Francisco an order to show cause why that position of said Garfield permit granting a right of way and franchise

to said City of San Francisco to build, construct and maintain said Hetch Hetchy dam and reservoir should not be revoked and canceled and why the Hetch Hetchy valley and reservoir site should not be eliminated from said Garfield permit that thereafter and on the 12th day of May, 1910, the then Secretary of the Interior requested the Secretary of War to appoint a Board of Army Engineers to act as an advisory board in the determination of the questions to arise upon the hearing of said order to show cause; that thereafter and on the 27th day of May, 1910, the then Secretary of the Interior made an order granting said City of San Francisco to and including June 1, 1911, within which the said City of San Francisco should answer said order to show cause why Hetch Hetchy dam and reservoir site should not be eliminated from said Garfield permit; that said order of continuance last aforesaid was granted upon the conditions and for the purpose, as stated therein, following, to wit: "Said continuance and postponement is granted for the purpose of enabling said City and County of San Francisco to furnish necessary data and information to enable the Department of the Interior to determine whether or not the Lake Eleanor basin and watershed contributory, or which may be made contributory thereto, together with all other sources of water supply available to said city, will be adequate for all present and reasonable prospective needs of said City of San Francisco and adjacent bay [44] cities without the inclusion of the Hetch Hetchy Valley as a part of said sources of supply,

and whether it is necessary to include said Hetch Hetchy Valley as a source of municipal water supply for said City and County of San Francisco and bay cities.

“In granting said postponement and continuance it is understood said City and County of San Francisco will at once proceed, at its own expense and with due diligence, to secure and furnish to said Advisory Board of Army Engineers all necessary data upon which to make the determination aforesaid, and pending the hearing upon said order to show cause, no attempt shall be made by said city or any of its officers or agents to acquire, as against the United States, any other or different rights to the Hetch Hetchy Valley than it now has under said permit, and that no effort shall be made by said city to develop said Hetch Hetchy Valley site.”

4. That thereafter from time to time the then Secretary of the Interior granted other and further continuances of said hearing until the final date for the submission of the case of said City of San Francisco in answer to said order to show cause was fixed for the first day of August, 1912, and that thereafter the final hearing was held before the then Secretary of the Interior in Washington in the District of Columbia on November 25th to 30th, inclusive, 1912; that after the hearing before the then Secretary of the Interior in November, 1912, as aforesaid, and on or about, to wit: March 1st, 1913, the then Secretary of the Interior refused to base any official action upon the report of said Advisory Board of Army Engineers or upon the data and reports fur-

nished by said City of San Francisco in answer to said order to show cause why the Hetch Hetchy Valley and reservoir should not be eliminated from the Garfield permit, upon the ground, among others, that the Congress of the United States [45] of America possessed the exclusive power and jurisdiction to grant an irrevocable right of way and franchise such as was included in the Garfield permit: That thereafter and on the 7th day of April, 1913, Congress of the United States of America convened in Washington, in the District of Columbia, in the first and special session of the 63d Congress; that at various times during the year 1913, the respective Congressional committees having jurisdiction of matters pertaining to the public lands of the United States held public hearings upon bills introduced in Congress, having for their object the granting to said city of San Francisco the said rights of way, franchises and special privileges to use the Hetch Hetchy dam and reservoir site for the uses and purposes aforesaid.

5. That on or about the month of June, 1913, the plaintiff herein was employed as a consulting civil engineer to make a survey in the field and to prepare notes, maps, profiles and a report of and concerning the availability of the Mokelumne River sources in the Sierra Nevada Mountains in California, aforesaid as an available source of water supply for irrigation and hydro-electrical purposes, and in the course of his investigations under such employment then and there discovered that, in extent and adequacy, said sources would economically

supply the City of San Francisco with at least 350,000,000 gallons of pure mountain water for domestic use per day; that thereafter and on or about the month of June, 1913, plaintiff discovered that the said availability and adequacy of said Mokelumne sources of water supply, when used in connection with the Lake Eleanor basin and watershed, to supply all present and reasonably prospective needs of said City of San Francisco and adjacent bay cities were and had been since 1912 intimately and accurately known to the city engineers of the City of San Francisco by and through a report [46] prepared by and under the direction of the then city engineer of said city in April, 1912, but that neither the facts contained therein nor the report itself had been furnished to said Advisory Board of Army Engineers; that acting in performance of the duty owing by civil engineers to their profession, plaintiff on or about the 14th day of June, 1913, voluntarily and upon his own initiative, but with the advice and consent of his clients, advised a member of the Committee on Public Lands of the House of Representatives of the United States of America substantially to the effect as aforesaid and that, on or about the 23d day of June, 1913, plaintiff, acting from the motives and with the purposes aforesaid, voluntarily and upon his own initiative, but with the advice and consent of his clients, advised the chairman of said Public Lands Committee, among other things, that said City of San Francisco had suppressed from said Board of Army Engineers a carefully considered

report made by and under the direction of its then city engineer in April, 1912, wherein and whereby it was fully and accurately shown that an amount of water for domestic uses could be supplied to San Francisco from the Mokelumne River sources which, combined with Lake Eleanor was sufficient for all present and reasonably prospective needs of said City of San Francisco and adjacent bay cities; that thereupon and as a result of said communications an adjourned meeting of said Committee on Public Lands of said House of Representatives was set for July 7th, 1913, for the purpose of hearing and determining the facts aforesaid and to give opportunity to parties then in the City of San Francisco to appear and testify regarding the same before said committee in Washington; that thereafter one Eugene J. Sullivan, President of the Sierra Blue Lakes Water and Power Company, against the wishes of plaintiff and his clients, appeared before said Committee on Public Lands of the House of Representatives and testified to the best of his ability concerning [47] the facts which were within the particular knowledge of plaintiff; that said Committee on Public Lands sought to discredit the testimony of the said Sullivan upon the ground of his personal interest in the said Sierra Blue Lakes Water and Power Company, and because said company owned water rights which would have to be purchased by said City of San Francisco if it obtained its water supply from the Mokelumne sources; that thereafter and during all the rest of said special session of Congress and up to and until

the date that said bill granting said right of way, franchise and special privileges to the City of San Francisco, was passed by the Congress of the United States of America, it became and was the sole object of said City of San Francisco acting by and through its agents and lobbyists to discredit the statements made by and furnished to said Committee on Public Lands of said House of Representatives by the plaintiff herein by attaching the interest of said plaintiff to that of the said Sullivan; that during none of the time herein mentioned was the plaintiff in the employ of the said Sullivan or acting by or under his direction or control, nor did he have any pecuniary interest in the sale of properties of the Sierra Blue Lakes Water and Power Company, located on the Mokelumne River, to said City of San Francisco, and that he, the plaintiff, was actuated in furnishing the statements and reports to said Committee on Public Lands concerning the availability and adequacy of said Mokelumne sources of water supply for said City of San Francisco from the pure motives and with the honest purposes aforesaid and no other; that no facts or circumstances were proved or offered to be proved before any of the committees of Congress which would show otherwise, or which would particularly show that plaintiff, alone, or in combination or conspiracy with the said Sullivan or any other person pretended to have an opposition [48] water supply to sell to the City of San Francisco, or that plaintiff alone, or in combination or conspiracy with the said Sullivan or anyone else,

was engaged in an attempt to perpetrate a gross fraud or any fraud upon the government of the United States or the City of San Francisco or upon any other person or persons, interest or interests, corporation or corporations public or private.

6. That on or about September 3d, 1913, the said Committee on Public Lands of the House of Representatives having favorably reported the bill designated "bill H. R. 7207 entitled 'A Bill Granting to the City and County of San Francisco certain rights of way in, over and through certain public lands, the Yosemite National Park, and Stanislaus National Forest and certain lands in the Yosemite National Park, the Stanislaus National Forest, and the public lands in the State of California, and for other purposes,' " being a bill for an act of Congress granting said City of San Francisco said right of way, franchises and special privileges to construct, maintain and operate said dam and reservoir in said Hetch Hetchy Valley for domestic supply and hydro-electric power purposes as aforesaid, the same was passed by the House of Representatives aforesaid; and thereafter and on the 1st day of December, 1913, said bill came up for consideration and debate in the Senate of the United States under a rule requiring said debate to be closed and a vote to be taken thereon on the 6th day of December, 1913; that upon receiving notice of the time said bill would be up for debate in said Senate of the United States the defendant, the Examiner Printing Company in the special interest of said City of San Francisco and for the purpose of increasing the power, prestige and in-

fluence of the daily newspaper printed and published by it in said city—the San Francisco Examiner—and to increase and augment the value of the goodwill of said newspaper [49] and of said Examiner Printing Company, and the defendant, William Randolph Hearst, in the special interest of the City of San Francisco for the purpose of augmenting his own individual personal and political power and influence in the different parts of the United States of America as aforesaid and in the interest of further increasing the value of the goodwill of his newspaper interests in said City of San Francisco conceived and laid out the plan of issuing a special Washington edition of the San Francisco Examiner by printing, publishing and circulating in the City of Washington, in the District of Columbia, and elsewhere in the United States of America and throughout the world, an issue of said newspaper to be known as The San Francisco Examiner which should contain no other subject matter, news, dispatches, special articles or other printed reading matter than that pertaining and favorable to and which tended to promote the passage by the Senate of the United States of America of said bill H. R. No. 7207; that the said special Washington edition of the San Francisco Examiner was thereupon and on December 2, 1913 printed, published and issued in the City of Washington in the District of Columbia and consisted of sixteen pages entirely devoted to the favorable consideration of the bill known as bill H. R. No. 7207; that plaintiff is informed and believes and therefore alleges that the said Washington edition

of said San Francisco Examiner was without precedent in the following and each of the following particulars, that is to say; that it was the first newspaper to be edited, printed and published under the direct personal control, management and supervision of the defendant, William Randolph Hearst; that it is the only newspaper ever issued at the capital of the United States of America for the express and only purpose of directly influencing the action of Congress of the United States in favor of the passage of a bill [50] granting rights of way, franchises and special privileges and immunities belonging to all of the people of the United States in behalf of a special interest while the debate upon the passage of said bill was in progress; that it was the first and only paper, issued under such circumstances, to contain what purports to be signed statements and interviews of special articles by the Vice-president of the United States of America, and by members of the Cabinet of the President of said United States, and by the speaker of the House of Representatives of the United States, and by a Representative in Congress and by a large number of members of the Senate of the United States expressing favorable sentiments in behalf of and endorsing the passage of such a bill at the time when said bill was under discussion in the Congress of the United States; also that it was the only paper that was ever printed and published in the Capital of the United States of America, for the purpose and under the circumstances hereinbefore stated, by a newspaper publisher or proprietor who did not own, print or pub-

lish a newspaper in said capital; that plaintiff is informed and believe and therefore alleges that the reportorial and mechanical work upon said paper was done by members of the staff of other and different newspapers, owned or controlled by said defendant, William Randolph Hearst, and printed and published in other metropolitan cities in the United States than San Francisco, State of California and that, as plaintiff is informed and believes and therefore alleges, said signed interviews and statements with the officers, agents and trustees of the Government of the United States were obtained by and through the personal influence of the defendant, William Randolph Hearst, and of his attorneys, emissaries and agents brought to the capital of the United [51] States from New York and Chicago and other places where the said defendant operates and conducts his newspaper enterprises, by the said defendant, William Randolph Hearst, and at his expense and at the expense of the defendant, Examiner Printing Company, for the purpose of obtaining said signed special articles and interviews and of editing, printing and publishing said special Washington edition of said San Francisco Examiner as aforesaid; that at and prior to the time said bill came up for debate in the Senate of the United States, as aforesaid, considerable public attention and interest throughout the different parts of the United States had become centered upon the obviously great efforts that were being made by the agents and lobbyists maintained at Washington as aforesaid by said City of San Francisco in behalf of the passage of

said bill and much public criticism had been and was indulged in between the months of June and December, 1913, by the press of the United States over and concerning the suppression from the Advisory Board of Army Engineers of the favorable report of the city engineer of said San Francisco, prepared in April, 1912, as aforesaid, showing the availability and adequacy of the Mokelumne source of water supply for said City of San Francisco; that said suppressed report was known to the press and the public of the United States as the "Bartell Report" and the "Bartell-Manson Report"; that the fact of the suppression of said report was first made public by and through the statements and communications made by the plaintiff as aforesaid and was first publicly testified to before the Committee on Public Lands of the House of Representatives by the said Eugene Sullivan on the 7th day of July, 1913; that no reference was made in said special Washington edition of said San Francisco Examiner by said defendants, Hearst and Examiner Printing Company, to said Bartell-Manson Report or to the fact of its suppression and the concealment thereof from the Advisory Board of Army Engineers by [52] said City of San Francisco; but that on the other hand said defendants vilified personally said Eugene J. Sullivan and sought to discredit the testimony of said Sullivan by charging him with being a thief and by printing and publishing on the sixth page of said special Washington edition of said San Francisco Examiner under the following headline in black-faced type

“THIEF WITH THE NATURE LOVERS”

the following statement also in black-faced type attributed to a congressman of the United States of America from the State of California:

“I want to state here and now that I have read this literature put out by these people (meaning the statements of the plaintiff and the said Eugene Sullivan concerning the suppression of the “Bartell-Manson Report” as aforesaid and the statement of the plaintiff and the said Sullivan that the said Mokelumne sources of water supply were reasonably available and adequate for all present and reasonably prospective needs of said City of San Francisco and the adjacent bay cities).

It has only one foundation in fact and that foundation is the letters of this man Sullivan (meaning the Eugene J. Sullivan), whom we proved in the hearings in the House (meaning the House of Representatives) to be a thief and a man who ought to be in the penitentiary.”

That by reason of all of the foregoing special and particular facts and circumstances surrounding the printing and publishing of said special Washington edition of said San Francisco Examiner said newspaper became and was an object of great interest and attention in the City of Washington and elsewhere throughout the United States and was widely circulated and read throughout all of said places; that said newspaper by reason of the fact that [53] it contained no transient or fugitive news, but was entirely devoted to said Hetch Hetchy project possessed a permanent value and held a continuing in-

terest which has had the effect to cause the copies thereof to be preserved by those into whose possession they came; that many copies thereof have been offered and put into circulation from time to time since said second day of December, 1912, in the said City of San Francisco, State of California by said defendants Examiner Printing Company and William Randolph Hearst.

7. That on said second day of December, 1913, and at the City of Washington aforesaid the said defendants, William Randolph Hearst, as the managing editor in charge of, and the said defendant, Examiner Printing Company as the proprietor and publisher of said special Washington edition of said San Francisco Examiner did print and publish in said newspaper and did thereby circulate in and throughout the said City of Washington and elsewhere throughout the United States of America and the English speaking world at large, of and concerning the plaintiff the following defamatory and libelous statements, to wit:

“INSPIRATION OF OPPOSITION

“During the Senate Committee hearing it came out that much of the inspiration for gross and careless aspersions made on the City of San Francisco, the army engineers and engineers generally, came from two men named Sullivan and Aston, who had pretended to have an opposition water supply to sell to San Francisco.

But at the House hearing it had been so thoroughly developed that the Sullivan-Aston scheme was just a gross fraud that Mr. Johnson got very

angry when Sullivan was referred to [54] as his friend, though he admitted receiving the information on which he had attacked the Hetch Hetchy project as a bad jobbery from Sullivan's man, Aston."

8. That by the use and publication of said words and language, used and published by said defendants, and each of them as aforesaid, on the seventh page of said special Washington edition of said newspaper and opposite the publication of the words and language heretofore set out charging the said Eugene J. Sullivan to be "a thief" and "a man who ought to be in the penitentiary," they and each of them intended to charge and assert, and to be understood as charging and asserting, and were by the readers of said newspaper in fact understood as charging and asserting, (1) that this plaintiff was guilty of the fraudulent intent, purpose and design to combine and conspire with the said Eugene J. Sullivan to perpetrate a gross fraud upon the City of San Francisco by and through the sale to said city of a worthless opposition water supply and that said plaintiff did pretend to have such opposition water supply to sell to said city and that, because he pretended with said Sullivan to have such opposition water supply to sell to said city he was led to and did make gross and careless aspersions on said city of San Francisco, the Advisory Board of Army Engineers and engineers generally (meaning thereby to refer to the statements that had been made before various congressional hearings upon the authority of plaintiff concerning the suppression

of said Bartell-Manson Report by said City of San Francisco);

(2) That this plaintiff had been proved at the hearing before the Committee on Public Lands of the House of Representatives to be guilty of combining and conspiring with said Eugene J. Sullivan to perpetrate and of perpetrating a gross fraud [55] either upon said committee, or upon the House of Representatives, or upon Congress, or upon the City of San Francisco, or upon some other person or persons, corporation or corporations, public or private, heretofore unnamed;

(3) That this plaintiff was the tool, sycophant or hireling of said Eugene J. Sullivan, and, therefore, of "a thief" and "of a man who ought to be in the penitentiary" and that as such he would stultify himself and prostitute his personal honor and professional reputation to do the servile bidding of such an employer without reference to Truth and Right; and that he had so demeaned himself and disgraced his profession in a certain course of conduct with one Mr. Johnson (meaning Robert Underwood Johnson of New York City), by lying and misrepresenting facts in connection with the Hetch Hetchy project at the bidding and behest of the said Sullivan:

That said charges so made and published by the defendants and each of them and so understood, and by them and each of them intended to be understood by the readers of said special Washington edition of said "San Francisco Examiner" were, and are in every particular false, misleading, de-

famatory, libelous, unprivileged, and without excuse, and that they had a tendency to and did and do expose plaintiff to hatred, contempt and obloquy by imputing to him the basest, meanest and most untrustworthy traits of character as a man, neighbor and citizen and had a tendency to and did and do injure him in his good name, reputation, and business, occupation and profession and that said charge was published and circulated by said defendants and each of them with express malice on the part of each of said defendants, and with the design and intent on the part of each of them to outrage the feelings of plaintiff and to cause him to be shunned and avoided by his fellow citizens, and to destroy his reputation and character for honesty and integrity; and to hold him out to the people of the United [56] States and elsewhere as being devoid of honesty and integrity and by reason of an alleged business association with a man stigmatized as a "thief" and "who ought to be in the penitentiary," as being unworthy of any personal or professional trust or confidence, and to injure him in his good name, reputation, business, occupation and profession.

9. That plaintiff has sustained damage by reason of said publication in the sum of One Hundred Thousand Dollars.

WHEREFORE, plaintiff demands judgment against the defendants and each of them in the sum of One Hundred Thousand Dollars.

JACOB M. BLAKE,
Attorney for Plaintiff. [57]

*In the District Court of the United States, for
the Northern District of California, Second
Division.*

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Cor-
poration, and WILLIAM RANDOLPH
HEARST,

Defendants.

**Stipulation and Order Allowing Plaintiff to File
Amended Complaint.**

It is hereby stipulated by and between the attor-
neys for the respective parties in the above-entitled
action that an order may be made and entered in the
above-entitled court allowing the plaintiff above
named to file an amended complaint. It is also fur-
ther stipulated on the part of defendant that veri-
fication of said complaint is hereby waived.

Dated San Francisco, California, September 2,
1914.

JACOB M. BLAKE,

Attorney for Plaintiff,

GARRET W. McENERNEY (B),

Attorney for Defendants.

Upon reading and considering the foregoing stip-
ulation, it is hereby ordered that the plaintiff be
and hereby is allowed to file his amended complaint
in the above-entitled court and cause.

Dated this 3d day of September, 1914.

WM. C. VAN FLEET,
Judge of the District Court.

Due service of within amended Complaint admitted by copy this 2d day of September, 1914.

GARRET W. McENERNEY,
Attorney for Defendants. [58]

[Endorsed]: Filed September 3, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [59]

*In the District Court of the United States, for
the Northern District of California, Second
Division.*

Action No. 15,780—Dept. No. —.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST,

Defendants.

Answer of Examiner Printing Company.

Now comes EXAMINER PRINTING COMPANY, a corporation, one of the defendants in the above-entitled action, and in answer to the complaint of the plaintiff therein admits, denies and alleges as follows:

I.

This defendant denies each and every of the allegations of said complaint, save and except as are

hereinafter expressly admitted.

II.

Admits the allegations of paragraph II of said complaint.

III.

Admits that the special Washington edition of the "San Francisco Examiner" referred to in paragraphs VII and VIII of plaintiff's complaint was published by this defendant.

WHEREFORE this defendant prays that plaintiff take nothing by his action, and that this defendant be hence dismissed with its costs herein incurred.

GARRET W. McENERNEY,
Attorney for Defendant. [60]

[Endorsed]: Filed September 24, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[61]

*In the District Court of the United States, for
the Northern District of California, Second
Division.*

Action No. 15,780—Dept. No. —.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation,
and WILLIAM RANDOLPH
HEARST,

Defendants.

Answer of Defendant William Randolph Hearst.
Now comes WILLIAM RANDOLPH HEARST,

one of the defendants in the above-entitled action, and in answer to the complaint of the plaintiff therein admits, denies and alleges as follows:

I.

This defendant denies each and every of the allegations of said complaint, save and except as are hereinafter expressly admitted.

II.

Admits the allegations of paragraph II of said complaint.

WHEREFORE said defendant prays that plaintiff take nothing by his action, but that defendant be hence dismissed with his costs herein incurred.

GARRET W. McENERNEY,

Attorney for Defendant.

Receipt of a copy of the within Answer this 23d day of Sept., 1914, is hereby admitted.

JACOB M. BLAKE,

Attorney for Plaintiff. [62]

[Endorsed]: Filed September 24, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[63]

*In the District Court of the United States for
the Northern District of California, Second
Division.*

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Cor-
poration, and WILLIAM RANDOLPH
HEARST,

Defendants.

Notice of Motion to File Amended Answer.

To the Plaintiff in the Above-entitled Action and to
Jacob M. Blake, Esq., Attorney for said Plain-
tiff:

YOU AND EACH OF YOU WILL PLEASE
TAKE NOTICE that EXAMINER PRINTING
COMPANY, a corporation, one of the defendants
in the above-entitled action, will on the 18th day of
January, 1915, at the opening of court on said day,
or as soon thereafter as counsel can be heard, at the
courtroom of the above-entitled court, Postoffice
Building, Seventh and Mission Streets, in the City
and County of San Francisco, State of California,
move said Court for an order permitting it to file
an Amended Answer in the above-entitled action.
Said motion will be made upon the ground that said
Amended Answer is proper and that the allowance
of the same will be in the interest of justice; and
will be based upon all the records and files in said

action, upon this notice of motion, and upon said Amended Answer, a copy of which is hereto annexed.

Dated San Francisco, January 14, 1915.

GARRET W. McENERNEY,
Attorney for Defendant Examiner Printing Com-
pany. [64]

*In the District Court of the United States, for
the Northern District of California, Second
Division.*

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Cor-
poration, and WILLIAM RANDOLPH
HEARST,

Defendants.

Amended Answer of Examiner Printing Company.

Now comes EXAMINER PRINTING COM-
PANY, a corporation, one of the defendants in the
above-entitled action, and, by leave of Court first
had and obtained, files this, its Amended Answer to
the Amended Complaint in said action and, by way
of said Amended Answer, admits, denies and alleges
as follows:

I.

Denies each and every of the allegations of said
amended complaint, save and except as hereinafter
expressly admitted.

II.

Admits the allegations of paragraph 2 of said amended complaint.

III.

Admits that the Special Washington Edition of the San Francisco Examiner referred to in paragraph 7 and 8 of plaintiff's Amended Complaint was published by this defendant.

For a further and separate Answer and defense, and, by way of justification, this defendant alleges that:

At all of the times mentioned in said Amended Complaint one Eugene J. Sullivan was the president of a corporation known as and called "Sierra Blue Lakes Water and Power Company. [65] (Said corporation claimed to be the owner of certain water rights in and about the Mokelumne River, in the Sierra Nevada Mountains, in the State of California, and at all of said times said corporation, through its said president, Eugene J. Sullivan, was endeavoring to sell said water rights to the City and County of San Francisco and at all of said times opposed the granting of the permit referred to in paragraph 6 of said amended complaint and all other permits of like tenor, substance and effect, for the reason that the alleged water rights of the Sierra Blue Lakes Water and Power Company, represented by said Sullivan, would have to be purchased by the City and County of San Francisco if it obtained its water supply from the Mokelumne sources.

In this behalf this defendant further alleges that there was a great disparity between the water rights

claimed to be owned by said Sierra Blue Lakes Water and Power Company and the water rights actually owned by it, and between the amount of water claimed to be available therefrom to the City and County of San Francisco, in the event it purchased the same, and the amount which would actually be available therefrom in the event of such purchase; and the claims of the Sierra Blue Lakes Water and Power Company and said Eugene J. Sullivan, its President, were at all of said times grossly exaggerated, and said scheme and effort of said Sierra Blue Lakes Water and Power Company, and of its said President, to sell said water rights to the City and County of San Francisco was at all of the times herein mentioned a "gross fraud" in the sense that the claims of said company and of said Sullivan were grossly exaggerated and that there was a great disparity between the rights claimed to be owned by said company and the rights actually owned thereby, and between the amount of water claimed to be available and the amount actually available. [66]

In this behalf, this defendant further alleges that at the times referred to in paragraph 7 of plaintiff's Amended Complaint the plaintiff herein was in the employ of said Sierra Blue Lakes Water and Power Company and had an interest in the alleged water rights owned by said Company, contingent upon the sale of said water rights to the City and County of San Francisco.

For a further and separate answer and defense, and by way of mitigation of damages in the event

that the plaintiff shall be held entitled to recover in said action, this defendant alleges as follows:

Prior to the publication of the article referred to in paragraph 7 of said Amended Complaint, the defendant herein had been informed that Eugene J. Sullivan had testified before the Committee on Public Lands of the House of Representatives of the United States of America that Taggart Aston, the plaintiff herein, was in the employ, as consulting engineer, of Sierra Blue Lakes Water and Power Company, of which said Eugene J. Sullivan was President, and that said Taggart Aston had an interest in the water rights claimed to be owned by said Sierra Blue Lakes Water and Power Company contingent upon the sale of said water rights to the City and County of San Francisco, or some other purchaser; and had further been informed that said Taggart Aston had stated that he had prepared, instigated and was responsible for all statements and charges made by said Eugene J. Sullivan in his telegrams to said Public Lands Committee of the House of Representatives; and, further, that said Taggart Aston, in a telegram to Honorable William Kent, a member of the House of Representatives of the United States of America, dated June 14, 1913, had stated that he had been appointed as consulting engineer by the Sierra Blue Lakes Water and Power Company to investigate their Mokelumne [67] River proposed water supply, and, further, in said telegram had designated and characterized said Sierra Blue Lakes Water and Power Company as his clients; and had further been informed that said

Taggart Aston, in a letter dated June 23, 1913, directed to Honorable Scott Ferris, Chairman of the Public Lands Committee of the House of Representatives of the United States of America, had stated that he had been appointed by the Sierra Blue Lakes Water and Power Company and allied interests, some weeks prior to the date of said letter, to make an examination and report on the Mokelumne River upper catchment as a source of hydro-electric power and water supply. This defendant further alleges that all of the aforesaid matters had prior to the publication referred to in paragraph 7 of said Amended Complaint been made a matter of public record and had been printed in the minutes of the Committee on Public Lands of the House of Representatives of the United States of America, and all of said statements were believed by the defendant and were relied upon by it.

In this behalf this defendant alleges that in and by the use of the term "Sullivan's man Aston" this defendant merely meant to convey the idea that said Aston was an associate of said Sullivan in connection with the Sierra Blue Lakes Water and Power Company and the efforts of that company and of the said Sullivan to sell the alleged water rights of said company to the City and County of San Francisco. In this behalf, this defendant further alleges that it used said term in no opprobrious sense or in any sense other than as herein stated.

Further in this behalf this defendant further alleges that prior to the publication of said article referred to in paragraph 7 of said Amended Complaint

it had been informed that the Advisory Board of Army Engineers, appointed by the Secretary of the [68] Interior of the United States to investigate relative to sources of water supply for San Francisco and Bay communities, had reported that "The project proposed by the City of San Francisco known as the Hetch Hetchy project is about twenty million dollars cheaper than any other feasible project for furnishing an adequate supply"; that the plaintiff herein had asserted that the cost of developing a supply on the Mokelumne River would be "much less than that of the Hetch Hetchy project"; and had further been informed that other competent engineers, including M. M. O'Shaughnessy, City Engineer of San Francisco, C. E. Grunsky, John R. Freeman and H. H. Wadsworth had reported unfavorably to the claims of said Sierra Blue Lakes Water and Power Company. And this defendant further alleges that prior to the publication of said article set forth in paragraph 7 of said Amended Complaint it had been informed that Colonel John Biddell, United States Army, one of the chairmen of the aforesaid Advisory Board of Army Engineers, in a letter to Honorable William Kent, member of the House of Representatives of the United States of America, had stated that the Advisory Board of Army Engineers believed that the estimate of 128,000,000 gallons daily was about all that could be counted on from the Mokelumne River unless existing water rights be purchased at great expense and unless the land tributary to this river be perpetually deprived of water from this source for irriga-

tion; and had further been informed, as against this finding of the Advisory Board of Army Engineers, that the plaintiff herein had reported to the Honorable Scott Ferris, Chairman of the Public Lands Committee of the House of Representatives, that 350,000,000 gallons daily of pure mountain water could be economically supplied to San Francisco from said Mokelumne River and that the taking of the same would not conflict with any [69] irrigation interests. In this behalf, this defendant further alleges that all of the aforesaid matters had prior to the publication of the article set forth in paragraph 7 of said Amended Complaint been published in the minutes of the Committee on Public Lands of the House of Representatives and in the report of said Committee and were matters of public record, and were believed by and relied upon by this defendant.

This defendant further alleges that prior to the publication of said article set forth in paragraph 7 of said Amended Complaint it had been informed that the legal title to the water rights claimed by the Sierra Blue Lakes Water and Power Company were in dispute and that said company could not deliver the water rights claimed by it, and further that these facts appeared in the report made by H. H. Wadsworth, Assistant Engineer to the aforesaid Advisory Board of Army Engineers, which said report had been ordered printed as a document of the House of Representatives by order of the House of Representatives dated May 27, 1913, and was a matter of public record, and, in this behalf, this defend-

ant alleges that it believed said statements and relied upon the same.

In this behalf, this defendant further alleges that in stating said article set forth in paragraph 7 of said Amended Complaint that said "Sullivan-Aston scheme" was a "gross fraud" it did not intend to charge or assert that said Sierra Blue Lakes Water and Power Company or said Sullivan or said Aston was knowingly engaged in the perpetration of a gross or any fraud, but intended merely to charge and assert that, by reason of the disparity between the claims of said company and of said Sullivan and Aston and the findings of said Advisory Board of Army Engineers [70] and of other competent engineers and of the Committee on Public Lands of the House of Representatives of the United States of America, said scheme was objectively a gross fraud.

WHEREFORE, defendant prays to be hence dismissed with its costs herein incurred.

GARRET W. McENERNEY, (B)

Attorney for Defendant Examiner Printing Company. [71]

Receipt of a copy of the within Notice of Motion this 14th day of January, 1915, is hereby admitted, and all objections as to time of service are hereby waived.

JACOB M. BLAKE,
Attorney for Plaintiff.

[Endorsed]: Filed Jan. 14, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [72]

At a stated term, to wit, the November term A. D. 1914, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 18th day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 15,780.

TAGGART ASTON,

vs.

EXAMINER PRINTING CO., et al.

Order Granting Defendant Leave to File Amended Answer.

By consent it was ordered that the motion of defendant Examiner Printing Co., for leave to file amended answer be granted. [73]

In the District Court of the United States, for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST,

Defendants.

Amended Answer of Examiner Printing Company.

Now comes EXAMINER PRINTING COMPANY, a corporation, one of the defendants in the above-entitled action, and, by leave of Court first had and obtained, files this, its Amended Answer to the Amended Complaint in said action and, by way of said Amended Answer, admits, denies and alleges as follows:

I.

Denies each and every of the allegations of said Amended Complaint, save and except as hereinafter expressly admitted.

II.

Admits the allegations of paragraph 2 of said Amended Complaint.

III.

Admits that the Special Washington Edition of the "San Francisco Examiner" referred to in paragraphs 7 and 8 of plaintiff's Amended Complaint was published by this defendant.

For a further and separate answer and defense, and by way of justification, this defendant alleges that: [74]

At all of the times mentioned in said Amended Complaint one Eugene J. Sullivan was the president of a corporation known as and called "Sierra Blue Lakes Water and Power Company." Said corporation claimed to be the owner of certain water rights in and about the Mokelumne River in the Sierra Nevada Mountains, in the State of California, and at all of said times said corporation, through

its said President, Eugene J. Sullivan, was endeavoring to sell said water rights to the City and County of San Francisco and at all of said times opposed the granting of the permit referred to in paragraph 6 of said Amended Complaint and all other permits of like tenor, substance and effect, for the reason that the alleged water rights of the Sierra Blue Lakes Water and Power Company, represented by said Sullivan, would have to be purchased by the City and County of San Francisco if it obtained its water supply from the Mokelumne sources.

In this behalf this defendant further alleges that there was a great disparity between the water rights claimed to be owned by said Sierra Blue Lakes Water and Power Company and the water rights actually owned by it, and between the amount of water claimed to be available therefrom to the City and County of San Francisco, in the event it purchased the same, and the amount which would actually be available therefrom in the event of such purchase; and the claims of the Sierra Blue Lakes Water and Power Company and said Eugene J. Sullivan, its President, were at all of said time grossly exaggerated, and said scheme and effort of said Sierra Blue Lakes Water and Power Company, and of its said President, to sell said water rights in the City and County of San Francisco was at all of the times herein mentioned a "gross fraud" in the sense that the claims of said company and of said Sullivan were grossly exaggerated and that there was a great disparity between the rights claimed to be owned by said company and the rights

actually owned thereby, and between the amount of [75] water claimed to be available and the amount actually available.

In this behalf, this defendant further alleges that at the times referred to in paragraph 7 of plaintiff's Amended Complaint the plaintiff herein was in the employ of said Sierra Blue Lakes Water and Power Company and had an interest in the alleged water rights owned by said company, contingent upon the sale of said water rights to the City and County of San Francisco.

For a further and separate answer and defense, and by way of mitigation of damages in the event that the plaintiff shall be held entitled to recover in said action, this defendant alleges as follows:

Prior to the publication of the article referred to in paragraph 7 of said Amended Complaint, the defendant herein had been informed that Eugene J. Sullivan had testified before the Committee on Public Lands of the House of Representatives of the United States of America that Taggart Aston, the plaintiff herein, was in the employ, as consulting engineer, of Sierra Blue Lakes Water and Power Company, of which said Eugene J. Sullivan was President, and that said Taggart Aston had an interest in the water rights claimed to be owned by said Sierra Blue Lakes Water and Power Company contingent upon the sale of said water rights to the City and County of San Francisco, or some other purchaser; and had further been informed that said Taggart Aston had stated that he had prepared, instigated and was responsible for all statements

and charges made by said Eugene J. Sullivan in his telegrams to said Public Lands Committee of the House of Representatives, and, further, that said Taggart Aston, in a telegram to Honorable William Kent, a member of the House of Representatives of the United States of America, dated June 14, 1913, had stated [76] that he had been appointed as consulting engineer by the Sierra Blue Lakes Water and Power Company to investigate their Mokelumne River proposed water supply, and, further, in said telegrams had designated and characterized said Sierra Blue Lakes Water and Power Company as his clients; and had further been informed that said Taggart Aston, in a letter dated June 23, 1913, directed to Honorable Scott Ferris, Chairman of the Public Lands Committee of the House of Representatives of the United States of America, had stated that he had been appointed by the Sierra Blue Lakes Water and Power Company and allied interests, some weeks prior to the date of said letter, to make an examination and report on the Mokelumne River upper catchment as a source of hydro-electric power and water supply. This defendant further alleges that all of the aforesaid matters had prior to the publication referred to in paragraph 7 of said amended complaint been made a matter of public record and had been printed in the minutes of the Committee on Public Lands of the House of Representatives of the United States of America, and all of said statements were believed by the defendant and were relied upon by it.

In this behalf this defendant alleges that in and

by the use of the term "Sullivan's man Aston" this defendant merely meant to convey the idea that said Aston was an associate of said Sullivan in connection with the Sierra Blue Lakes Water and Power Company and the efforts of that company and of the said Sullivan to sell the alleged water rights of said company to the City and County of San Francisco. In this behalf this defendant further alleges that it used said term in no opprobrious sense or in any sense other than as herein stated.

Further in this behalf this defendant alleges that prior to the publication of said article referred to in paragraph 7 of [77] said Amended Complaint it had been informed that the Advisory Board of Army Engineers, appointed by the Secretary of the Interior of the United States to investigate relative to sources of water supply for San Francisco and Bay communities, had reported that "The project proposed by the City of San Francisco known as the Hetch-Hetchy project is about twenty million dollars cheaper than any other feasible project for furnishing an adequate supply"; that the plaintiff herein had asserted that the cost of developing a supply on the Mokelumne River would be "much less than that of the Hetch Hetchy project"; and had further been informed that other competent engineers, including M. M. O'Shaughnessy, City Engineer of San Francisco, C. E. Grunsky, John R. Freeman and H. H. Wadsworth had reported unfavorably to the claims of said Sierra Blue Lakes Water and Power Company. And this defendant further alleges that prior to the publication of said

article set forth in paragraph 7 of said Amended Complaint it had been informed that Colonel John Biddell, United States Army, one of the chairmen of the aforesaid Advisory Board of Army Engineers, in a letter to Honorable William Kent, member of the House of Representatives of the United States of America, had stated that the Advisory Board of Army Engineers believed that the estimate of 128,000,000 gallons daily was about all that could be counted on from the Mokelumne River unless existing water rights be purchased at great expense and unless the land tributary to this River be perpetually deprived of water from this source for irrigation; and had further been informed as against this finding of the Advisory Board of Army Engineers, that the plaintiff herein had reported to the Honorable Scott Ferris, Chairman of the Public Lands Committee of the House of Representatives, that 350,000,000 gallons daily of pure mountain [78] water could be economically supplied to San Francisco from said Mokelumne River and that the taking of the same would not conflict with any irrigation interests. In this behalf, this defendant further alleges that all of the aforesaid matters had prior to the publication of the article set forth in paragraph 7 of said Amended Complaint been published in the minutes of the Committee on Public Lands of the House of Representatives and in the report of said Committee and were matters of public record, and were believed by and relied upon by this defendant.

This defendant further alleges that prior to the

publication of said article set forth in paragraph 7 of said Amended Complaint it had been informed that the legal title to the water rights claimed by the Sierra Blue Lakes Water and Power Company were in dispute and that said company could not deliver the water rights claimed by it, and further that these facts appeared in the report made by H. H. Wadsworth, Assistant Engineer to the aforesaid Advisory Board of Army Engineers, which said report had been ordered printed as a document of the House of Representatives by order of the House of Representatives, dated May 27, 1913, and was a matter of public record, and, in this behalf, this defendant alleges that it believed said statements and relied upon the same.

In this behalf this defendant further alleges that in stating in said article set forth in paragraph 7 of said Amended Complaint that said "Sullivan-Aston scheme" was a "gross fraud" it did not intend to charge or assert that said Sierra Blue Lakes Water and Power Company or said Sullivan or said Aston was knowingly engaged in the perpetration of a gross or any fraud, but intended merely to charge and assert that, by [79] reason of the disparity between the claims of said company and of said Sullivan and Aston and the findings of said Advisory Board of Army Engineers and of other competent engineers and of the Committee on Public Lands of the House of Representatives of the United States of America, said scheme was objectively a gross fraud.

WHEREFORE, defendant prays to be hence dismissed with its costs herein incurred.

GARRET W. McENERNEY, (B)
Attorney for Defendant Examiner Printing Company. [80]

Receipt of a copy of the within Amended Answer this 19th day of January, 1915, is hereby admitted.

JACOB M. BLAKE,
Attorney for Plaintiff.

[Endorsed]: Filed January 20, 1915. Walter B. Maling, Clerk. [81]

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY (a Corporation), and WILLIAM RANDOLPH HEARST,

Defendants.

Verdict.

We, the jury, find as against both the defendants the sum of Twenty-eight Hundred Dollars (\$2800.00) in favor of plaintiff as compensatory damages.

I. J. TRUMAN,
Foreman.

[Endorsed]: Filed Feby. 4, 1915. By Walter B. Maling, Clerk. [82]

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, (a Corporation), and WILLIAM RANDOLPH HEARST,

Defendants.

Judgment on Verdict.

This cause having come on regularly for trial upon the 20th day of January, 1915, being a day in the November, 1914, term of said court, before the Court and a jury of twelve men, duly impaneled and sworn, to try the issues joined herein: Jacob M. Blake, Esq., appearing as attorney for plaintiff and John J. Barrett, and A. W. Burke, Esqrs., appearing as attorneys for the defendants; and the trial having been proceeded with on the 21st, 22d, 26th, 27th, 28th and 29th days of January and the 2d, 3d, and 4th days of February, all in said year and term, and oral and documentary evidence upon behalf of the respective parties having been introduced and closed, and the cause, after argument by plaintiff's attorney and the instructions of the Court, having been submitted to the jury, and the jury having subsequently rendered

the following verdict, which was ordered recorded, namely; "We, the jury, find as against both the defendants the sum of Twenty-eight Hundred Dollars (\$2800.00) in favor of plaintiff as compensatory damages. I. J. Truman, Foreman," and the Court having ordered that judgment be entered in accordance with said verdict and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that Taggart Aston, plaintiff, do have and recover of and from Examiner Printing [83] Company (a corporation), and William Randolph Hearst defendants, the sum of two thousand eight hundred and 00/100 (\$2800.00) dollars, together with his costs in this behalf expended, taxed at \$395.15.

Judgment entered February 4, 1915.

WALTER B. MALING,

Clerk.

A true copy.

[Seal]

Attest: WALTER B. MALING,

Clerk.

[Endorsed]: Filed February 4, 1915. Walter B. Maling, Clerk. [84]

*In the District Court of the United States for the
Northern District of California.*

No. 15,780.

TAGGART ASTON

vs.

EXAMINER PRINTING CO., a Corp., WILLIAM
RANDOLPH HEARST.

Clerk's Certificate to Judgment-roll.

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California do hereby certify that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled action.

ATTEST my hand and the seal of said District Court, this 4th day of February, 1915.

[Seal]

W. B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: Filed February 4, 1915. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[85]

In the District Court of the United States, for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST,

Defendants.

Bill of Exceptions.

BE IT REMEMBERED that, on Wednesday, the 20th day of January, 1915, the above-entitled action

came on regularly for trial before the above-entitled court and a jury, the Honorable Wm. C. Van Fleet presiding, the plaintiff therein being represented by J. M. Blake, Esq., Attorney for said plaintiff, and the defendants being represented by John J. Barrett, Esq., and Andrew F. Burke, Esq. (the two persons last named appearing for Garret W. McEnerney, Esq., Attorney for said defendants). Thereupon, the following proceedings were had and taken:

On the 21st day of January, 1915, the defendants served upon counsel for the plaintiff and filed in said court notices of exceptions to and of motions to suppress the [86] depositions of William J. Wilsey, George A. McCarthy and Robert Underwood Johnson, which said depositions had theretofore been taken on behalf of the plaintiff and had been theretofore returned to and filed in said court. Said notice of exceptions and motion to suppress the deposition of said William J. Wilsey was as follows:

“In the District Court of the United States, for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST,

Defendants.

Notice of Exceptions to Deposition and of Motion to Suppress the Same.

To the Plaintiff in the Above-entitled Action and to
JACOB M. BLAKE, Esq., His Attorney:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE (a) that the defendants in the above-entitled action hereby except to the action of CHARLES R. STOUGHTON, the person before whom the deposition of WILLIAM J. WILSEY was taken in the above-entitled action, in this, that the said Charles R. Stoughton appeared for and represented the plaintiff on the hearing of said deposition in addition to being the person before whom said deposition was taken, and did on behalf of said plaintiff propound to the witness all the questions propounded on behalf of said plaintiff; (b) that said defendants hereby object and except to said deposition upon the ground that no sufficient notice of the time and place of the hearing of the same was given to these defendants.

YOU ARE FURTHER NOTIFIED that the defendants will, on account of the matters specified in (a) and (b) above, move to suppress the said deposition of said William J. Wilsey when the same is sought to be read in evidence by the plaintiff. Said motion will be based upon all the records and files in said action, including this notice.

DATED, January 20th, 1915.

GARRET W. McENERNEY,
Attorney for Defendants." [87]

Said notice of exceptions and motion to suppress the deposition of said George A. McCarthy was as follows:

“In the District Court of the United States, for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST,

Defendants.

Notice of Exceptions to Deposition and of Motion to Suppress the Same.

To the Plaintiff in the Above-entitled Action and to JACOB M. BLAKE, Esq., His Attorney:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE (a) that the defendants in the above-entitled action hereby except to the action of HENRY HAGUE DAVIS, the person before whom the deposition of GEORGE A. McCARTHY was taken in the above-entitled action, in this, that the said Henry Hague Davis appeared for and represented the plaintiff on the hearing of said deposition in addition to being the person before whom said deposition was taken, and did on behalf of said plaintiff propound to the witness all the questions propounded on behalf of said plaintiff; (b) that said

defendants hereby object and except to said deposition upon the ground that no sufficient notice of the time and place of the hearing of the same was given to these defendants.

YOU ARE FURTHER NOTIFIED that the defendants will, on account of the matters specified in (a) and (b) above, move to suppress the said deposition of said George A. McCarthy when the same is sought to be read in evidence by the plaintiff. Said motion will be based upon all the records and files in said action, including this notice.

DATED, January 20th, 1915.

GARRET W. McENERNEY,
Attorney for Defendants.”

Said notice of exceptions and motion to suppress the deposition of Robert Underwood Johnson was as follows: [88]

“In the District Court of the United States, for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST,

Defendants.

**Notice of Exceptions to Deposition and of Motion
to Suppress the Same.**

To the Plaintiff in the Above-entitled Action and to
JACOB M. BLAKE, Esq., His Attorney:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE (a) that the defendants in the above-entitled action hereby except to the action of CHARLES R. STOUGHTON, the person before whom the deposition of ROBERT UNDERWOOD JOHNSON was taken in the above-entitled action, in this, that the said Charles R. Stoughton appeared for and represented the plaintiff on the hearing of said deposition in addition to being the person before whom said deposition was taken, and did on behalf of said plaintiff propound to the witness all the questions propounded on behalf of said plaintiff; (b) that said defendants hereby object and except to said deposition upon the ground that no sufficient notice of the time and place of the hearing of the same was given to these defendants.

YOU ARE FURTHER NOTIFIED that the defendants will, on account of the matters specified in (a) and (b) above, move to suppress the said deposition of said Robert Underwood Johnson when the same is sought to be read in evidence by the plaintiff. Said motion will be based upon all the records and files in said action including this motion.

DATED, January 20th, 1915.

GARRET W. McENERNEY,
Attorney for Defendants.”

Thereafter, on said 21st day of January, 1915, and before the taking of any evidence in said action, said

defendants moved to suppress each of said depositions, and upon the hearing of said motion introduced, and there were received, in evidence each of the said notices of exceptions and motions to suppress [89] aforesaid, and the depositions of each of said witnesses. Said depositions are not here set forth for the reason that the matters shown thereby, upon which the defendants rely in support of their motion to suppress the same, can be and are next hereinafter briefly stated.

Each of said depositions was taken *de bene esse*. Upon the face of each of said depositions it appears that the defendants were represented by counsel upon the taking of said deposition, but that all questions propounded to each of said witnesses on behalf of the plaintiff, were propounded by the notary before whom said deposition was taken, and that except for said notary the plaintiff was unrepresented on the taking of said deposition.

Thereupon, in opposition to said motions to suppress said depositions, the plaintiff offered, and there was received, in evidence three affidavits of Jacob M. Blake, in words and figures, respectively, as follows:

“In the District Court of the United States, for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST,

Defendants.

Affidavit of Jacob M. Blake on Behalf of the Plaintiff Opposing the Exceptions of the Defendant to the Deposition of William J. Wilsey and to Their Motion to Suppress the Same.

United States of America,
Northern District of California,—ss.

I, JACOB M. BLAKE, being first duly sworn on oath depose [90] and say that I am the attorney for the plaintiff in the above-entitled action; that I have carefully examined the deposition of WILLIAM J. WILSEY, a witness on behalf of the plaintiff, taken before Charles R. Stoughton, and by him returned to this Court; that I have carefully compared the oral interrogatories propounded to the witness by the said Stoughton with a copy of written interrogatories prepared and forwarded to said Stoughton for the purpose of the examination of said witness, by this affiant; and that the former are identical in form and substance with the latter; also that

said copy of said interrogatories originally so prepared and forwarded to said Stoughton by affiant are attached to and made a part of the said deposition.

JACOB M. BLAKE.

Subscribed and sworn to before me this 21st day of January, A. D. 1914.

[Seal] WALTER B. MALING,
Clerk, U. S. District Court, Northern District of
California.”

*“In the District Court of the United States, for the
Northern District of California, Second Division.*

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST,

Defendants.

Affidavit of Jacob M. Blake on Behalf of the Plaintiff Opposing the Exceptions of the Defendant to the Deposition of George A. McCarthy and to Their Motion to Suppress the Same.

United States of America,
Northern District of California,—ss.

I, JACOB M. BLAKE, being first duly sworn on oath depose and say that I am the attorney for the plaintiff in the above-entitled action; that I have

carefully examined the deposition of GEORGE A. McCARTHY, a witness on behalf of the plaintiff, taken before HENRY HAGUE DAVIS, and by him returned to this Court; that I have carefully compared the oral interrogatories propounded to the witness by the said Davis with a copy of written interrogatories prepared and forwarded to said Davis for the purpose of the examination of said witness by this affiant; and that the former are identical in form and substance with the latter; also that said copy of said interrogatories originally so prepared and forwarded to said Davis by affiant are attached to and made a part of the said deposition.

JACOB M. BLAKE.

Subscribed and sworn to before me this 21st day of January, A. D. 1914.

[Seal] WALTER B. MALING,
Clerk U. S. District Court, Northern District of California." [91]

“In the District Court of the United States, for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST,

Defendants.

Affidavit of Jacob M. Blake on Behalf of the Plaintiff Opposing the Exceptions of the Defendant to the Deposition of Robert Underwood Johnson and to Their Motion to Suppress the Same.

United States of America,
Northern District of California,—ss.

I, Jacob M. Blake, being first duly sworn on oath depose and say that I am the attorney for the plaintiff in the above-entitled action; that I have carefully examined the deposition of ROBERT UNDERWOOD JOHNSON, a witness on behalf of the plaintiff, taken before Charles R. Stoughton, and by him returned to this Court; that I have carefully compared the oral interrogatories propounded to the witness by the said Stoughton with a copy of written interrogatories prepared and forwarded to said Stoughton for the purpose of the examination of said witness, by this affiant; and that the former are identical in form and substance with the latter; except that in orally propounding interrogatory No. 2 the said Stoughton inadvertently changed the word 'special' in the second line of the written interrogatory to the word 'original'; also that said copy of said interrogatories originally so prepared and forwarded to said Stoughton by affiant are attached to and made a part of the said deposition; affiant further avers that he requested the said witness, Johnson, in writing to identify and compare for accuracy and correctness, the newspaper clipping of the New York Times of the issue of July 12, 1913, with the original issue of said paper on file in the office of said paper

in New York City, and that he voluntarily offer the same in evidence as an Exhibit to be attached to said deposition; that no request was made by affiant or by any one else on behalf of the plaintiff, to the knowledge of affiant, upon the same Charles R. Stoughton, other than a request by said witness, to have said clipping from said New York Times, attached to and returned with said deposition.

JACOB M. BLAKE.

Subscribed and sworn to before me this 21st day of January, A. D. 1914.

[Seal] WALTER B. MALING,
Clerk U. S. District Court, Northern District of California." [92]

[Certificate of Notary Public to Deposition of W. J. Wilsey and Robert Underwood Johnson.]

Plaintiff further offered in evidence the certificate of Charles R. Stoughton annexed to the deposition of said William J. Wilsey and Robert Underwood Johnson, which certificate is in words and figures as follows, to wit:

(Title Court and Cause.)

State of New York,

County of New York,—ss.

I hereby certify that on this sixth day of January, 1915, before me, a notary public in and for the County of New York, State of New York, at my office at No. 530 5th Avenue in the City of New York, State of New York, personally appeared, pursuant to the notices hereto annexed, between the hours of 10 o'clock A. M. and 2 o'clock P. M., Mr. William J. Wilsey and Mr. Robert Underwood

Johnson, the witnesses named in said notices, and Samuel H. Evins, Esq., appearing for defendants, and the said Mr. William J. Wilsey and Mr. Robert Underwood Johnson being by me first duly cautioned and sworn or affirmed to testify the whole truth and being carefully examined, deposed and said as in the foregoing depositions set forth.

I further certify that the several exhibits attached to said depositions were offered in evidence and marked for identification as is set out in said depositions.

I further certify that the said depositions were then and there reduced to typewriting under my personal supervision and were, after they had been reduced to typewriting, subscribed by the witness, and the same have been retained by me for the purpose of sealing up and directing the same to the clerk of the court as required by law.

I further certify that the reasons that the said depositions were taken were that said witnesses reside as follows:

Mr. William J. Wilsey, Portland, Oregon,

Mr. Robert Underwood Johnson, 57 West 45th Street, New York City, N. Y.,

more than one hundred miles from any place at which a district court of the United States for the Northern District of California is appointed to be held by law.

I further certify that I am not of counsel or attorney for either of the parties, nor am I interested in the event of the cause.

WITNESS my hand and official seal at New York

City, State of New York, this 11th day of January, 1915.

[Notarial Seal.] CHARLES R. STOUGHTON,
Notary Public, No. 3555, New York County.
Register's No. 6009.

Commission expires March 30, 1916." [93]

**[Certificate of Notary Public to Deposition of
George A. McCarthy.]**

Plaintiff also offered in evidence the certificate of Henry Hague Davis, annexed to the deposition of George A. McCarthy, which said certificate is in words and figures as follows:

“Dominion of Canada,
Province of Ontario, to wit:

I, Henry Hague Davis, of the City of Toronto in the County of York in the Province of Ontario, a notary public by Royal authority, duly appointed, do certify that on this 4th day of January, 1915, before me at my office at No. 10 Adelaide Street East, in the said City of Toronto, personally appeared, pursuant to the notice hereto annexed, between the hours of 10 o'clock A. M. and 1 o'clock P. M., George A. McCarthy, witness erroneously named in said notice as George A. McCarty, and Samuel H. Evins, Esq., of 80 Maiden Lane, Borough Manhattan, New York, U. S. A., appearing for defendants, and the said George A. McCarthy being by me first duly cautioned and sworn to testify the whole truth and being carefully examined, deposed and said as in the foregoing deposition set out.

I further certify that the several exhibits attached to said deposition were offered in evidence and

marked for identification as is set out in said deposition.

I further certify that said deposition was given and completed on the 4th day of January, 1915.

I further certify that on its completion the said deposition was then and there reduced to typewriting under my personal supervision and was, after it had been reduced to typewriting, subscribed by the witness, and the same has been retained by me for the purpose of sealing up and directing the same to the clerk of the court as required by law.

I further certify that the reason the said deposition was taken was that said witness resides at the City of Toronto in the Province of Ontario, more than one hundred miles from the place where this cause is to be tried and more than one hundred miles from any place at which a district court of the United States for the Northern District of California is appointed to be held by law.

I further certify that I am not of counsel or attorney for either of the parties nor am I interested in the event of the cause.

WITNESS my hand and official seal at the City of Toronto, County of York and Province of Ontario, this 4th day of January, 1915.

[Notarial Seal] H. H. DAVIS,
Notary Public in and for the Province of Ontario.”

All exhibits introduced in evidence with the foregoing depositions were referred to, described in, marked for identification and attached to the interrogatories prepared by the said Jacob M. Blake, as attorney for the plaintiff, as aforesaid. [94]

Thereupon said motions were argued by counsel for the respective parties. The Court denied said motions to suppress said depositions. Counsel for the defendants thereupon excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 1.

Subsequently during the trial of said cause, each of the aforesaid depositions was put in evidence by the plaintiff.

[Testimony of Eugene J. Sullivan, for Plaintiff.]

EUGENE J. SULLIVAN, called as a witness on behalf of the plaintiff, testified that he was and had been since about the year 1910, the President of the Sierra Blue Lakes Water and Power Company; that the properties of that Company were situate in the Counties of Calaveras, Amador and Alpine in the State of California; further, that he knew that the City of San Francisco had commenced its efforts to obtain a mountain source of water supply in 1871 and the application for Hetch Hetchy right of way was first made by the city about the year 1900. Plaintiff then offered and there was received in evidence a certified copy of the decision of the Secretary of the Interior of the United States on the application by the City and County of San Francisco for reservoir sites in Hetch Hetchy Valley and at Lake Eleanor and the Yosemite National Park, dated May 11, 1908, from which decision the following portion was read to the jury:

[**Extract from Decision of Secretary of Interior.**]

“3. The City and County of San Francisco will develop the Lake Eleanor site to its full capacity before beginning the development of the Hetch Hetchy site, and the development of the latter will be begun only when the needs of the City and County of San Francisco, and adjacent cities which may join with it in obtaining a common water supply, may require such further development. As the drainage area tributary to Lake Eleanor will not yield, under the conditions herein imposed, sufficient run-off in dry years to replenish the reservoir, a diverting dam and canal from Cherry Creek to Lake Eleanor reservoir for the conduct of waste [95] flood or extra-seasonal waters to said reservoir is essential for the development of the site to its full capacity, and will be constructed if permission is given by the Secretary of the Interior.”

The plaintiff then offered and there was admitted in evidence a certified copy of a letter written by R. A. Ballinger, Secretary of the Interior of the United States, to the Honorable Mayor and Supervisors of the City and County of San Francisco, calling upon said city to show cause “why the Hetch Hetchy Valley and reservoir site should not be eliminated from said permit,” (referring to the Garfield permit) and further requiring the City and County of San Francisco to submit said showing on or before the 1st day of May, 1910.

The plaintiff then offered, and there was received in evidence, certified copies of documents of the De-

partment of the Interior of the United States, showing that on May 12, 1910, the Secretary of the Interior of the United States requested the Secretary of War to appoint a Board of Advisory Army Engineers to advise the Secretary of the Interior, at the hearing, of the return of the aforesaid order to show cause; that said Advisory Board of Army Engineers was appointed May 18, 1910, and consisted of John Biddle, Lieut. Col., Corps of Engineers; Harry Taylor, Lieut. Col., Corps of Engineers; Spencer Cosby, Major, Corps of Engineers, Colonel, United States Army, and that on May 26, 1910, said Advisory Board of Army Engineers advised the Secretary of the Interior of the United States as follows:

[Report of Advisory Board of Army Engineers, May 26, 1910.]

“As in the development of the Lake Eleanor system above mentioned, the city now expects to eventually use the Hetch Hetchy Valley, even though the time of this use may be delayed a number of years, and as the occupation of this valley at present or at any future time is considered to be undesirable if it can be avoided, it is recommended that the City of San Francisco, in conjunction with the transbay cities, submit such data about all available sources of supply, either from the [96] Sierras or elsewhere, with or without filtration, as will permit the Secretary of the Interior to decide whether these cities could not procure from such other sources at reasonable cost water of good quality and in sufficient quantity so that the use of the Hetch Hetchy.

Valley for a water supply may be avoided in practical perpetuity.”

Counsel for the plaintiff next offered in evidence a certified copy of proceedings before the Secretary of the Interior, in re use of Hetch Hetchy reservoir site in the Yosemite National Park, held on May 6, 1908, from which the following portion was read to the jury:

**[Proceedings Had Before Secretary of Interior,
May 26, 1908.]**

“The SECRETARY.—Gentlemen, I have had a rough report made to me, a report that has not been completely finished by the Board of Army Engineers on the subject under consideration. (See appendix, Exhibit “A.”)

They have indicated to me the substance of their report, pursuant to the action that was taken yesterday, after conference with the gentlemen representing the various parties. The substance of their report is that they advise me, as Secretary of the Interior, that it will be necessary, in order to secure such data as will allow them to intelligently advise this department on the sources of water supply requisite for the present and prospective needs of San Francisco and the bay cities, if the Hetch Hetchy be eliminated, to have detailed investigation and inquiry made into the conditions of the watersheds and so forth.

Now, I am not able to present this report in its completed and final form, but it will be finished and in final form by this board during the day and made part of the record; and in pursuance of that report I

feel it my duty to make an order continuing this matter for further investigation, so that the department may be equipped with all the necessary information to make a final and proper disposition of this question.

An order has been prepared, not in final form either, as I have not had the time to draft it in such form as I wanted it to finally take, but as a preliminary. So that you may all understand the situation, I will read this draft. It will be completed during the day. (See appendix, Exhibit "B.")

There is one additional feature that has not been incorporated in this order that should be incorporated, and that is that the authorities of the City of San Francisco should present to this army board from time to time the data which they acquire, so that the advisory board may know the progress that is being made, and also that they should outline to [97] this board the scope and plan of the investigation which the city proposes to make, in order that the army board can proceed with a perfectly intelligent view of what is going to be done. Now that has not been incorporated in this report; and also the general details of the methods of developing these proposed sources of water in the Hetch Hetchy Valley, for instance, in case it should be used as a part of the water system, or the Lake Eleanor basin, has not been incorporated.

Mr. LONG.—Mr. Secretary, as I understand it, the scope of the examination is limited to Lake Eleanor and the Hetch Hetchy.

The SECRETARY.—No, sir; that is not the scope

of the investigation. The scope of the investigation here proposed is as follows:

Said continuance and postponement is granted for the purpose of enabling said City and County of San Francisco to furnish necessary data and information to enable the Department of the Interior to determine whether or not the Lake Eleanor basin and the watershed contributory, or which may be made contributory thereto, together with all other sources of water supply available to said city, will be adequate for all present and reasonably prospective needs of said City of San Francisco and adjacent bay cities, without the inclusion of the Hetch Hetchy Valley as a part of said sources of supply, and whether it is necessary to include said Hetch Hetchy Valley as a source of municipal supply for said City and County of San Francisco and bay cities.

Mr. LONG.—It comes outside of the permit of May 11?

Mr. SECRETARY.—Yes. In other words, we want to know what is necessary here as far as the Hetch Hetchy Valley is concerned. If we are up to the question of elimination, the question the Government wants to know and the question the American people want to know is whether it is a matter of absolute necessity for the people of that city to have this source of water supply; otherwise, it belongs to the people for the purpose for which it has been set aside.

Mr. LONG.—This is an enlargement of your original order to show cause?

The SECRETARY.—It is not necessarily an en-

largement of it, for if you will examine the order to show cause, it is necessarily implied, I think, that if the Hetch Hetchy Valley is not to be eliminated San Francisco must show that she has not other sources of water supply.

Mr. LONG.—I simply want to know that there is no check on Lake Eleanor or the plans already formulated.

The SECRETARY.—As I understand, the Advisory Board of Army Engineers see no reason why they should not proceed. [98]

Mr. LONG.—We have authorized a bond issue of \$45,000,000 for the development of the Lake Eleanor system.”

Counsel for the plaintiff then read to the jury the following letter from the Advisory Board of Army Engineers to the Secretary of the Interior as set forth in the aforesaid certified copy of the proceedings before the Secretary of the Interior, in re use of Hetch Hetchy Reservoir Site

[Letter, Dated May 27, 1910, from Army Engineers to Secretary of Interior.]

“Washington, D. C., May 27, 1910.

Sir: For the purpose of carrying out the examinations and investigations directed by your order of the 27th instant, addressed to the mayor and supervisors of the City and County of San Francisco, State of California, directing the submission of additional data relative to the available water supplies for San Francisco, the Board of Advisory Engineers recommends that it be authorized to establish at San Francisco an office under the direction of the

member of the board station at San Francisco, to which the data as obtained and submitted by the City and County of San Francisco and all parties interested shall be sent, and to employ such clerical and technical assistants as may be necessary, in addition to those that may be furnished by the Department of the Interior.

For these purposes and to procure such independent data and information as in the opinion of the board may be necessary and to make the necessary personal examinations, it is estimated that \$12,000 will be required.

Respectfully submitted,

JOHN BIDDLE,

Lieut. Col., Corps of Engineers,

HARRY TAYLOR,

Lieut. Col., Corps of Engineers,

SPENCER CROSBY,

Major, Corps of Engineers, Colonel, U. S. Army.

The Secretary of the Interior.”

Counsel for plaintiff thereupon offered in evidence a certified copy of the order dated May 27, 1910, in the matter of the permit of May 11, 1908. Said order reads as follows:

[Order, Dated May 27, 1910, of Secretary of Interior, Re Permit of May 11, 1908.]

“THE SECRETARY OF THE INTERIOR,
WASHINGTON.

O L

12-13-3A

ORDER, IN THE MATTER OF THE PERMIT
OF MAY 11, 1908, TO SAN FRANCISCO,
RELATING TO THE HETCH HETCHY VAL-
LEY. [99]

In the matter of the order directed by the Secretary of the Interior to the Mayor and Supervisors of the City and County of San Francisco, State of California, on February 25, 1910, to show cause why the Hetch Hetchy Valley and reservoir site should not be eliminated from the permit to said city of date May 11, 1908;

The above-entitled matter having come on regularly to be heard on the 25th day of May, 1910, at the hour of 10 o'clock A. M., and said City and County of San Francisco having, through its representatives, applied for a continuance of said hearing and for further time within which to more fully respond to said order, said application being made upon the ground that sufficient data was not available upon which to make showing responsive to said order, and an adjournment to Thursday morning, May 26, at 10 o'clock A. M., having been taken to permit the Advisory Board of Army Engineers to confer with the engineers representing the several parties interested herein respecting said application and the propriety of granting the same, whereupon the matter of said

application for continuance and postponement having been duly and fully considered by the Secretary of the Interior and said Advisory Board of Army Engineers, said board having recommended the same in writing,

It is hereby ordered that said City and County of San Francisco be, and it is hereby, granted to and including the first day of June, 1911, within which to respond to said order to show cause, and that hearing upon said order be, and it is hereby, continued until the hour of 10 o'clock A. M. on said last mentioned date.

Said continuance and postponement is granted for the purpose of enabling said City and County of San Francisco to furnish necessary data and information to enable the Department of the Interior to determine whether or not the Lake Eleanor basin and the watershed contributory, or which may be made contributory, thereto, together with all other sources of water supply available to said city, will be adequate for all present and reasonably prospective needs of said City of San Francisco and adjacent bay cities without the inclusion of the Hetch Hetchy Valley is a part of said sources of supply, and whether it is necessary to include said Hetch Hetchy Valley as a source of municipal water supply for said City and County of San Francisco and bay cities.

In granting said postponement and continuance it is understood said City and County of San Francisco will at once proceed, at its own expense and with due diligence, to secure and furnish to said Advisory Board of Army Engineers all necessary data

upon which to make the determination aforesaid, and pending the hearing upon said order to show cause no attempt shall be made by said city or any of its officers or agents to acquire, as against the United States, any other or different rights to the Hetch Hetchy Valley than it now has under said permit, and that no effort shall [100] be made by said city to develop said Hetch Hetchy Valley site.

Said Advisory Board of Army Engineers is hereby authorized to procure such independent data and information as it may deem necessary or proper to a full and complete determination of the matters committed to said board and the Secretary of the Interior for determination, and that said board may call upon the Geological Survey or other bureaus of the Department of the Interior for such assistance as any such bureau may be able to render in the premises.

It is further understood that said city will, as soon as practicable, submit to said advisory board a full exhibition of its proposed plan of development and utilization of water under said permit, together with estimates of the cost thereof, and also a full statement of all outstanding water rights, both for irrigation, power, and other uses, on the Tuolumne River and Lake Eleanor basins, and the proposed method of providing for the protection thereof.

All questions as to the validity and legality of said permit of date May 11, 1908, are hereby expressly reserved for decision and determination until said final hearing.

Dated this 27th day of May, 1910.

R. A. BALLINGER,
Secretary of the Interior.

May 28/10, Letter to Hon. S. M. Stockstage, copy for the City of San Francisco.

May 28/10, Letter to Col. Biddle encl. copy.”

The plaintiff then offered and there was admitted in evidence certified copies of various letters between the then Secretary of the Interior and the City and County of San Francisco in the nature of applications and orders of the continuance from time to time of the aforesaid order to show cause, which said letters show that said order to show cause was continued from time to time by the Secretary of the Interior with the understanding that the terms and conditions of the order of May 27, 1910, were in no particular modified or changed. Evidence was then introduced to the effect that the hearing upon the aforesaid order to show cause was held before the then Secretary of the Interior of the United States on November 25th, 26th, 27th, 28th, 29th and 30th, 1912. [101]

Counsel for the plaintiff thereupon offered in evidence a certified copy of a letter from Walter L. Fischer, Secretary of the Interior, to the Mayor and Board of Supervisors of the City and County of San Francisco, State of California, dated March 1, 1913. In said letter the Secretary of the Interior refused to take any official action upon the report of the Advisory Board of Army Engineers or upon the reports or data furnished by the City and County of San Francisco in response to the afore-

said order to show cause, and on the ground, among others, that the Congress of the United States possessed the exclusive power and jurisdiction to grant irrevocable rights of way and franchises such as were included in the said Garfield permit. Evidence was next introduced on behalf of the plaintiff to the effect that on April 17, 1913, the Congress of the United States convened in its First and Special Session of the Sixty-third Congress, and that at various times in 1913, during said special session of Congress, the Public Lands Committee of the House of Representatives of the United States and the Public Lands Committee of the Senate of the United States had held public hearings upon bills pending before said respective houses having for their object the granting to the City and County of San Francisco of a right of way and franchise to use the Hetch Hetchy Dam and Reservoir Site in behalf of developing a source of domestic water supply.

The witness, Eugene J. Sullivan, thereupon testified that he was the Sullivan referred to in an article published in a special Washington edition of the San Francisco "Examiner," dated December 2d, 1913. Thereupon the plaintiff offered and there was received in evidence copy of said special Washington edition of said San Francisco "Examiner," dated December 2d, 1913, from which the following portion was read to the jury: [102]

[Extracts from Washington Edition of San Francisco "Examiner" Dated December 2, 1913.]

“CONGRESSMAN KENT CHAMPIONS RIGHTS OF A MILLION PEOPLE.

Leader Among Conservationists. He attacks the Unfair Methods of Opposition to Hetch Hetchy Plan.

William Kent, congressman from California, has long been recognized as a practical conservationist.

His conservation policy took so practical a turn that he bought and gave to the people of his State and of the world the beautiful 'Muir Woods' in Marin county, Cal.

This wonderful grove of primitive redwoods—sequoia sempervirens—he rescued from private greed and made one of the notable public parks of the country.

It was Mr. Kent, too, who bought and established Hull House for Jane Addams in Chicago. And this is what such a conservationist has to say, of the great 'job' by which San Francisco is to get pure water from Hetch Hetchy and of the sort of opposition the bill has been subjected to.

In testifying before the Senate Committee on Public Lands on September 24 last, Congressman Kent said sharply:

RESENTS SUCH CRITICISM.

'I am rather inclined to resent the criticism that we who stand for this bill are opposed to conservation. I have tried to be an honest exponent of sane and sensible conservation, and to further the use of

our national resources without unnecessary waste.

‘But when an opportunity comes to give to a great community upward of 200,000 horse-power upon which not a cent of private profit shall ever be made; when it comes to the question of benefiting upward of a million people, then I believe that conservation demands that I do my duty and try to help rather than to hinder such a worthy project.’

‘“I have heard it said right along,” Mr. Whitman said in the hearings in the House, “you will find it is largely a question of water power.”’

‘I admit that. I want the people of the cities of California; I want the irrigationists and the people of San Joaquin valley to be forever free from any danger of being held up in the interest of private profit, if that can be done.’

TO SEE AND TO USE.

‘Mr. Underwood Johnson expressed great confidence in his knowledge of the purposes of the Creator in the matter of this valley. I do not know whether we can take it that he is absolutely sure of being right. He made the statement that those wonders were put there to be looked at. How are we going to tell what things are there to be looked at and what things [103] are there to be used? It seems reasonable to me that we should use the useful things and look at the beautiful things; and that the highest use of the useful things is their use for the benefit of humanity.’

‘I made the statement in the House that if Nia-

gara Falls could be used to lighten the burdens of the overworked, I should be willing to see those falls harnessed. I would not be willing to see them harnessed for private profit, but if Niagara Falls could be utilized for the alleviation of overworked suffering humanity, I should like to see the falls used for that purpose. That is the kind of a conservationist I am, and I put it in the rawest, bald-est terms.

THIEF WITH THE NATURE LOVERS.

‘That is the purpose of the Almighty, it seems to me. I do not think people should be so sure of the purposes of the Almighty. I do not believe people should be so ready to asperse the methods of other people.

‘I think it is time that the members of Congress who have tentatively committed themselves to measures of this kind should stand up and talk back a little bit.

I want to state here and now that I have read this literature put out by these people. It has only one foundation of fact and that foundation is the letters of this man Sullivan, whom we proved in the hearings in the House to be a thief and a man who ought to be in the penitentiary.

‘We proved his claims to be absolutely valueless; that he issued \$250,000 of bonds on this alternative scheme that were really worthless. Every clipping I get from the public press—and I get lots of them—has this same foundation of falsity, and I am very glad to have the opportunity to express my opinion of that kind of a propaganda.’ ”

The foregoing article appeared on page 6 of said Washington Edition of the San Francisco Examiner of Tuesday, December 2d, 1913.

There was also read to the jury the following article appearing on page 7 of said paper:

“INSPIRATION OF OPPOSITION.

During the Senate committee hearing it came out that much of the inspiration for gross and careless aspersions made on the city of San Francisco, the army engineers and engineers generally, came from two men named Sullivan and Aston, who had pretended to have an opposition water supply [104] to sell to San Francisco.

But at the House hearing it had been so thoroughly developed that the Sullivan-Aston scheme was just a gross fraud that Mr. Johnson got very angry when Sullivan was referred to as his friend, though he admitted receiving the information on which he had attacked the Hetch Hetchy project as a bad jobbery from Sullivan's man, Aston.”

Thereupon the witness Sullivan testified that he met the plaintiff Aston in the spring of 1913. At that time plaintiff stated to the witness that he had certain parties who would purchase the properties of the Sierra Blue Lakes Water and Power Company, and that plaintiff mentioned the name of Mr. Wilsey of Portland as one of such parties; that the meeting with the plaintiff on that occasion resulted in the commission agreement between the witness on behalf of the Sierra Blue Lakes Water and Power Company and the plaintiff, relating to the sale of the properties of the company. The letter was

thereupon offered and received in evidence and reads as follows:

[Letter, Dated March 10, 1913, from Eugene J. Sullivan to Taggart Aston.]

“San Francisco, Cal. March 10, 1913.

“Mr. Taggart Aston, C. E.,
Foxcroft Bldg.,
City.

Dear Sir:—

In the event of any business being done by our Company with Mr. Wilsey, we will pay you a commission of ten per cent on the amount received to be paid as received and in kind.

This is not an option of the Company's properties but it protects you in case any business is done through Mr. Wilsey.

Sincerely yours,

EUGENE J. SULLIVAN,

President Sierra Blue Lakes Water & Power Co.”

The witness stated that the arrangement evidenced by the letter was the only arrangement he had with Mr. Aston at any time. The witness testified that he knew that plaintiff Aston went upon the company's properties on an engineering expedition [105] later in May, 1913, but that he was not at that time in the employ of the witness nor of the Sierra Blue Lakes Water and Power Company. The witness next testified that on or about June 22, 1913, he had represented to the Public Lands Committee of the House of Representatives of the United States that a report had been suppressed by the City of San Francisco concerning the availabil-

ity of the Mokelumne source as a water supply for San Francisco. The witness thereupon identified a copy of a telegram shown to him as copy of a telegram sent by him to the Honorable Scott Ferris, Chairman of the Public Lands Committee of the House of Representatives, and further testified that said telegram was prepared by the plaintiff and was signed and sent by the witness at the instigation of the plaintiff. Said telegram is in words and figures as follows:

[Telegram, Dated June 22, 1913, from Eugene J. Sullivan to Scott Ferris.]

“June 22d, 1913.

Re House Bill on Hetch Hetchy.

Hon. Scott Ferris, Chairman, Public Lands Committee, House of Representatives, Washington, D. C.

Re Raker Bill on Hetch Hetchy—our Consulting Engineer, Mr. Taggart Aston reports to us as follows:—

‘As result of investigations by myself and staff during past few weeks I find Upper Mokelumne River Catchments and proposed storage reservoirs capable of economically developing in dryest periods at least 350 Million gallons per day of pure mountain water for San Francisco all taken from above 2200 feet altitude. Through fortunate circumstances I find that City has suppressed report elaborately and carefully prepared by their engineers on Mokelumne project which definitely proves they knew that this source would supply city’s needs. Mr. Freeman made no personal examination of this

source—both he and the Army Engineers accepted and based their findings on biased and falsely represented data supplied by the City. I feel satisfied that Mr. Freeman, an Engineer of eminence and high reputation, would have examined personally and probably recommended Mokelumne [106] project had the Army Engineers and public not been grossly deceived and supplied with inaccurate information regarding it. As they and the Nation are entitled to assume that the National Park should not be destroyed unless as a matter of absolute necessity.

In addition to Mokelumne Supply there is available from Lake Eleanor and Cherry Creek 118 million gallons per day and from Spring Valley Company 140 million gallons per day, or total of 608 million gallons per day capable of supplying San Francisco and Bay Cities for next one hundred and eighty years without Hetch Hetchy. There is absolutely no public need for City to rush Hetch Hetchy inquiry as Lake Eleanor, Cherry Creek and Spring Valley alone can furnish supply for next seventy years. San Francisco now only using 35 million gallons per day.

Judging by my late investigations and new evidence unearthed, I consider Hetch Hetchy matter will prove great public scandal. Rigid inquiry should be held and Committee should call for City Engineers Bartell's and Manson's suppressed report of April, 1912. My plans and data will not be complete for five weeks yet, will consider it a duty to submit proofs to Congressional Committee then.'

Report ends. In view of above report we would respectfully ask your Committee to delay granting of Hetch Hetchy until our data has been presented. Kindly let Secretary of Interior and members of Committee have copies of this telegram.

EUGENE J. SULLIVAN,
President Sierra Blue Lakes Water & Power Co."

Counsel for the plaintiff then offered and there was [107] received in evidence a certified copy of the proceedings before the Committee on the Public Lands of the House of Representatives, Sixty-third Congress, First Session, on H. R. 6281, being the bill granting to the City and County of San Francisco certain rights of way in, over and through certain public lands, and read to the jury the following telegram admitted by the witness to have been sent by him to Honorable Scott Ferris, Chairman of the Committee on Public Lands:

[Telegram, Dated June 27, 1913, from Eugene J. Sullivan to Scott Ferris.]

"San Francisco, Cal., June 27, 1913.

Hon. Scott Ferris, Chairman Committee on Public Lands, Washington, D. C.

Sir: Regarding your letter of 19th instant, absolutely no water shortage here. Such allegations are framed for political purposes. No need for haste in Hetch Hetchy matter. City officials are merely deceiving your committee as they have already received Mr. Freeman and Army board. We shall have unfortunate scandal. Army board accepted city's false data in good faith but did not give sufficient time for personal investigation. Respect-

fully ask time to complete data and present proof to your committee. Please consider this an official communication.

EUGENE J. SULLIVAN,
President Sierra Blue Lakes Water and Power Co.”

Counsel further read the reply of said Scott Ferris to said telegram, which said telegram is in words and figures as follows:

[Telegram, Dated June 28, 1913, from Scott Ferris
to Eugene J. Sullivan.]

“June 28, 1913.

Hon. Eugene J. Sullivan, President Sierra Blue
Lakes Water & Power Co., San Francisco, Cal.

Telegram received. If you know of any scandal in existence or any that is probable to arise, please have some Representative in Congress or other reliable person communicate it to us so the committee may have the benefit of it. We will welcome any information you have at hand along this line.

SCOTT FERRIS,
Chairman.”

The following telegrams contained in said certified [108] copy of the proceedings before said Public Lands Committee were also read to the jury, it being admitted that said telegrams were sent to the persons and by the persons to whom and by whom they purport to have been sent:

[Telegram, Dated June 14, 1913, from Taggart Aston
to William Kent.]

“San Francisco, June 14, 1913.

Hon. William Kent,

House of Representatives,

Washington, D. C.:

Having been appointed as consulting engineer by Sierra Blue Lakes Water & Power Co. to investigate their Mokelumne River proposed water supply, I find that they will have available for San Francisco an economically developed supply of pure mountain water of at least 350,000,000 gallons per day. The city engineer's office have been aware of this, but seem to have mysterious prejudice in favor of Hetch Hetchy, and have not put forward the Mokelumne supply in its true and favorable light. My opinion, their report is unfair. I am preparing and shall have full data in few weeks that will prove granting of Hetch Hetchy unnecessary and against public interest, and that Mokelumne River upper catchments can fully supply San Francisco and bay regions for next century at least. Having investigated carefully and conservatively I give you my personal assurance as to this, and will furnish proofs.

My clients ask that committee defer action on Hetch Hetchy for six weeks until their full data can be presented.

TAGGART ASTON,

Foxcroft Building, San Francisco.”

It was admitted that in addition to the foregoing telegrams the following communications were sent

by and received by the persons to whom and by whom they purport to have been received and sent:

“San Francisco, May 28, 1913.

[Letter, Dated May 28, 1913, from Sierra Blue Lakes Water & Power Co. to Committee on Public Lands.]

“San Francisco, May 28, 1913.

Committee on Public Lands,
House of Representatives,
Washington, D. C.

Gentlemen: [109]

We learn by the public press that certain agents of San Francisco are now at Washington endeavoring to rush at this extra session of Congress a bill for a reservoir site in the Hetch Hetchy Valley, Yosemite National Park.

Before your Honorable Committee passes upon the question we respectfully ask that representatives of our Company be given a hearing, as we are prepared to show that San Francisco can obtain an adequate and immediate water supply from the sources of the Blue Lakes and Mokelumne Rivers and without molesting in any way a National Park, without interference with the rights of the irrigationist or of Turlock and Modesto Districts of this state, and at a saving to the city of many millions of dollars in construction.

In order that a proper and complete presentation of the facts can be made by the representatives of our company, we respectfully petition your Honorable Committee to postpone said hearing until the

next regular session of Congress.

Respectfully,
SIERRA BLUE LAKES WATER &
POWER CO.”

[Telegram, Dated June 9, 1913, from Sierra Blue
Lakes Water & Power Co. to Scott Ferris.]

“San Francisco, Calif., 9th June, 1913.

Hon. Scott Ferris, Chairman, Public Lands Com-
mittee, House Representatives, Washington,
D. C.

Our engineers are preparing a detailed report
showing that the Blue Lakes and the Mokelumne
River can supply San Francisco with an adequate
and immediate water supply. Will your Committee
extend time to receive their report?

SIERRA BLUE LAKES WATER &
POWER CO.”

Per ENGENE J. SULLIVAN,
Prest.”

[Letter, Dated June 24, 1913, from T. Aston to
Scott Ferris.]

“To the Hon. Scott Ferris, Chairman, Public Lands
Committee, Washington, D. C.

Re Mokelumne River Proposed Sources of Water
Supply to the City of San Francisco and Bay
Cities.

My dear Sir: As requested in your telegram to me
of yesterday. I have the honor to write you as fol-
lows:

Up to within five weeks ago I had no connection
with any of the proposed sources of supply to San

Francisco. Such knowledge as I possessed was derived from the reading of printed matter for and against the various proposed sources. The Hetch Hetchy reports impressed me as inconsistent and extremely prejudiced in favor of that project and as not doing justice to other sources; this is also the view held by many Western Engineers.

I had also read literature published by the Sierra Blue Lakes Water & Power Company, some of whose claims I now find have been rated somewhat high, due to their having had insufficient data. I was appointed by the Sierra Blue Lakes Water & Power Company, and allied interests, some few weeks ago to make an examination and report on the Mokelumne River Upper Catchment as a source of Hydro-Electric Power and Water Supply. I have found there was a considerable divergence between the amount of supply claimed by my clients and that which the City's Engineers in their *published reports* said was available—and that they also differed on the question of cost and amount of storage capacity. Regarding the latter, there was a wide difference of figures and neither party were in possession of sufficiently accurate data from which to obtain approximately correct figures; I therefore put a survey party in the field and have obtained results which [110] show that the Company were too high and the City too low in their estimates. I have also gone into and am still working on estimates of cost and hope to have my data in a sufficiently finished condition to present to your Committee within six week's time. As the result of my examination

up to the present time, I can assert:—

1. That 350 million gallons of pure mountain water can be economically supplied to San Francisco from 430 square miles of Mokelumne River Upper Catchment, at elevations between 2200 and 10,000 feet.

2. That the cost of developing this supply will be much less than that of the Hetch Hetchy project.

3. That this supply *alone* will be sufficient for San Francisco and Bay Cities' needs for next century.

4. That this supply combined with Spring Valley and Lake Eleanor will supply San Francisco and Bay Cities for 180 years.

5. That it can be developed from storage which will not conflict with any irrigation interest, or with the use, by the Nation, of the National Park at Hetch Hetchy.

6. That it will give the people of San Francisco as pure a Mountain Supply as Hetch Hetchy—and will not involve nearly as large an initial expenditure of certain works as proposed for Hetch Hetchy, many of which will be useless for City supply for some seventy years, and upon which the rate payers of San Francisco will have to pay fixed charges amounting to several times the original cost before they come into use.

7. That from 90,000 to 100,000 continuous H. P. or 140,000 to 160,000 salable H. P. will be economically available for Municipal purposes from the fall on the Mokelumne River proposed conduits. That the city, instead of having to supply Hydro-Electric

Power free, as they will have to do to irrigationists in the Hetch Hetchy project, would obtain from the Hydro-Electric Power on the Mokelumne River a gross annual revenue of from \$5,000,000 to \$6,500,000 or sufficient to at least pay the fixed charges on the cost of installing the whole supply as well as the purchase of the Spring Valley System.

You will note from Mr. Freman's report that he states he did not make any personal examination of this important source (which is the nearest and most economical for a supply to San Francisco) because I quote his own words (page 160e of his report) 'That an inspection of the large scale map makes plain the fact that all of the advantages of dam site, length and aqueduct, quality of storage reservoir, future water possibilities, and the great advantage of not having to seek some additional source, at a time when sources equal to those now available [111] are impossible to obtain, are all so plainly and strongly on the side of the Hetch Hetchy and upper Tuolumne that I do not believe it advisable to extend the \$15,000 to \$30,000 more or less, which explorations and complete surveys for thoroughly working out the best possible project for a Municipal water supply from Mokelumne would cost.'

Now an Engineer of Mr. Freeman's eminence may be able to draw his conclusions, on such an important matter as the future Water Supply to San Francisco, from a large scale map, but the writer has never yet met any other Engineer (and my experience with large City Supplies has extended over

20 years and has been world wide) who could arrive at such important conclusions in this manner.

This statement is quite on a par with another of Mr. Freeman's conclusions (page 134 his report Clause 149a) in which he recommends certain expensive constructions—'more for its psychological effect on the public than for any sound engineering reason.' And I may state that it is the general opinion amongst Engineers that the above statement is true of most of his findings.

I am sure that my surprise and indignation will be shared by you and your Committee, and the general public, when I state that the City suppressed a carefully considered report by the City Engineers Bartell and Manson, in April, 1912, in which they stated that an amount of water approximately what we claim could be supplied to San Francisco, and that the Mokelumne Source combined with Lake Eleanor was sufficient for San Francisco and the Bay Cities requirements—and that there was substituted a report by Engineer Grunsky (acting on behalf of the City and at the bequest of the City Officials) a report which states that only 60 million gallons was available.

I am sure that this act of trickery should prompt your Committee to grant opportunity and time for the most rigid inquiry. As in ordinary business life this might be termed 'the City's attempt to loot the Nation of Hetch Hetchy under false pretenses.'

I have asked Mr. Wadsworth, who prepared the Army Engineers case, if he had been given the Manson report as part of the data which the City pre-

sented and he informed me that he was not aware there was such a report.

I would respectfully suggest that your Committee call for it. I am prepared to prove its existence.

Mr. Wadsworth, for the Army Board, made a short but able analysis of the Mokelumne project—he proved the existence of the amount of supply claimed for but swallowed it up in ‘compensation’ water. My clients will be able to prove his information regarding the amount of ‘priorities’ or ‘compensation’ water to have been made on incorrect information supplied to him, and that the amount of 350 million gallons per day can be supplied as I have before asserted. We feel sure that had the Army Engineers [112] of Mr. Freeman devoted to the Mokelumne project the time and money (which would only have been a moiety of that devoted to Hetch Hetchy) that they could not have failed to recommend it.

My clients understand that the City Officials are endeavoring to rush the Hetch Hetchy grant, but we feel sure that your Committee’s sense of duty to the Nation will not permit this, but that ample opportunity will be given them, and also the proponents of other sources to prove their cases, the more especially as we now definitely know that the sentiment in favor of Hetch Hetchy has grown out of false assumptions and has been fostered by gross deception of Congress and the public. And I feel sure that your Committee will not sanction the insult to the Army Board or to your own intelligence in this suppression of certain data and the presentation of

biased data, which has been characteristic of the City Officials.

There is no public call for haste in granting of Hetch Hetchy. I therefore trust your Committee will give my clients the opportunity to present our case in an endeavor, with advantage, to save the National Park for the Public. Should you not find it advisable to do so, we shall deem it unfortunate.

Kindly consider this communication and my report contained in Mr. Sullivan's telegram to you of June 22d, as a public communication to your Committee on behalf of my clients.

Very respectfully yours,

T. ASTON.

T. A. D."

[Telegram, Dated June 28, 1913, from Scott Ferris to Eugene J. Sullivan.]

"June 28, 1913.

To Mr. Eugene J. Sullivan, Care, Sierra Blue Lakes Water & Power Co., San Francisco, California.

Since wiring you this morning it has been stated before the committee that you have a financial interest in Blue Lakes as a source of water supply and are now seeking delay in your own and your company's interest. If you have any evidence in support of your contentions and will come here and present it, the committee not close hearings until Monday, July seventh next to give you opportunity to produce it. Wire at once whether you will come and specify nature of your charges.

SCOTT FERRIS,

Chairman." [113]

[Telegram, Dated June 30, 1913, from Taggart
Aston to Scott Ferris.]

“June 30th, 1913.

Hon. Scott Ferris,
Chairman, Public Lands Committee,
Washington, D. C.

We respectfully ask your committee to insist that the original copy of alleged suppressed report by Asst. City Engineer Bartell to City Engineer Manson, of April, 1912, on the Mokelumne River as a source of water supply for San Francisco be sent from San Francisco and tabled before your committee before July 7th.

TAGGART ASTON.”

[Letter, Dated July 1, 1913, from Scott Ferris to
Taggart Aston.]

“July 1, 1913.

Mr. Taggart Aston,
526 Foxcroft Building,
San Francisco,
California.

My dear Sir:

I beg to acknowledge receipt of your esteemed communication under date of June 24th with reference to the San Francisco water supply matter.

I presume you are aware of the recent developments regarding this legislation and it would be unnecessary for me to go into detail about it.

It is, however, true that it appears that every governmental officer interested in the matter as well as Honorable Gifford Pinchot is of the opinion that

the Hetch Hetchy proposition would be the most economical as well as the most feasible proposition.

I am glad to get your comments and suggestions, however, and I assure you that no action will be taken on the bill until every phase of it has been gone over by the Committee.

Very sincerely yours,

SCOTT FERRIS." [114]

[Letter, Dated July 2, 1915, from Taggart Aston to
Scott Ferris.]

"July 2d, 1913.

To the Hon. Scott Ferris, Chairman, Public Lands
Committee, Washington, D. C.

My dear Sir:

In reply to your telegram of yesterday, I very much regret my inability to appear before your committee on July 7th.

The cause of my being unable to do so is, I beg to assure you, quite beyond my personal control.

I am,

Very respectfully yours,

TAGGART ASTON."

[Telegram, Dated July 6, 1913, from Taggart Aston
to Scott Ferris.]

"July 6th, '13.

Hon. Scott Ferris,

Chairman, Public Lands Committee,
Washington, D. C.

I prepared, instigated, and am responsible for all statements and charges made by Eugene J. Sullivan in his telegrams to you. Spring Valley's sworn

statement to City Officials for month of May this year shows four hundred days supply stored in their reservoirs for San Francisco. There is also over four hundred days additional supply available from their underground gravel supply, or some two and half years water supply on hand even if no rain fell meantime. Therefore City officials plea of shortage to your Committee is not 'bona fide' and undoubtedly has been intended to grossly deceive you for purpose of rushing Hetch Hetchy bill through extra session. On account of City's Service distributing pipes being insufficient Spring Valley Co. have issued notices not to waste water. Referring to my letter to you of June 23d, H. H. Wadsworth, who prepared Army Board's reports on Hetch Hetchy makes written statement that Bartell-Manson suppressed report on Mokelumne Supply was never seen or heard of by him.

In justice to the American people and to your Committee time asked for should be allowed for me to demonstrate the truth of the claims I set forth in my letter of June 23d.

TAGGART ASTON."

**[Letter, Dated July 8, 1913, from Scott Ferris to
Taggart Aston.]**

"July 8, 1913.

Mr. Taggart Aston,
526 Foxcroft Building,
San Francisco.

My dear Sir:

Replying to your esteemed communication of July 2, and regretting your inability to be present before

the Committee on July 7th in connection with the [115] San Francisco water supply matter, beg to say, I also regret no little that you were unable to be present at that time. The hearings closed on July 7th after Eugene J. Sullivan had presented his views to the Committee. The future procedure of the Committee will be take the bill up, read it section by section and take some action thereon. I must respectfully suggest, however, that if requested, opportunity will be afforded interested parties to present their views to the Committee at the Senate end of the Capitol when the bill comes up before that body for consideration.

Very sincerely yours,

SCOTT FERRIS."

[Letter, Dated July 8, 1913, from Taggart Aston to Scott Ferris.]

"San Francisco, July 8th, 1913.

To the Hon. Scott Ferris, Chairman, Public Lands Committee, Washington, D. C.

My dear Sir:

With reference to Mr. Eugene J. Sullivan's evidence before your Committee on the 7th inst., I may state that his associates and myself endeavored to dissuade him from going to Washington, knowing him to be a man with a grievance and liable to bring extraneous matter into his evidence. Upon his insisting to proceed, my clients, who had engaged me as a Consulting Engineer to report on the Mokelumne source and advise his company, considerably refused to permit me to appear before your Committee. We are not in sympathy with his

method of giving evidence, neither do we approve of his unnecessary abuse of individuals.

I may explain that I am not Mr. Sullivan's engineer as he has spoken of me, but engaged by others to advise his Company. However, certain essential facts remain as outlined in my letter to you, dated June 24th.

I have advisedly called the Bartel-Manson's report a 'suppressed report,' and in explanation thereof, hereunder inform you as to how I came to know of it. I sent in a note to Mr. O'Shaughnessy, the City Engineer of San Francisco, on the day he left for Washington (early in June), asking him to permit me to obtain from his draughting department copies of reservoir plans of the Mokelumne River project and other data, as I had been engaged to prepare a report thereon. He sent his Clerk with me to the Chief Draughtsman, Mr. Jones; the latter told me that the plans were locked up and asked me to call again. I called several times with a like result and was thus led to suspect that the officials were endeavoring to avoid giving me access to this data. On June 13th, I telephoned and an Assistant replied that both Mr. Jones and Mr. Bartel, who were in charge, were out of town for some days, but asked me to call, which I did on [116] the following morning when I saw this assistant, who was apparently unsophisticated and innocent as to any intrigue on the part of his superiors to delay me in getting access to the data desired. I asked for copies of the North Fork and Railroad Flat Reservoirs plans, but this assistant, apparently consider-

ing me of more importance than I am sure my appearance justified, pulled out a mass of maps and data connected with the Mokelumne Source, and from the innermost recesses of the drawer produced a report by Mr. Bartel and Mr. Manson, on the back of which I was surprised to find thirteen elaborately prepared plans and diagrams, all relative to the Mokelumne project. As I had never heard of such report or plans before, I looked over the report and was still further surprised to notice that its findings conceded the Mokelumne to have a Water Supply sufficient for the needs of San Francisco for the next hundred years, at least. I at once took the determination to expose the deception of the public and Army Board which the suppression of this report entailed. I asked the assistant for the negatives of all the plans filed at the back of the report, and also for the report for the purpose of having copies made. He handed me these without demur, and I gave him a receipt for them. I at once went to the blue- printers and had the report and plans photographed. Upon returning to my office some hours later my assistants informed me that the City Engineer's department had sent an official to my office threatening to inform the police if the report was not returned forthwith, and stating it was a document which was not supposed to be seen, and that the Assistant who let me see it would get into serious trouble for so doing. I at once phoned to the City Engineer's office and expressed myself in indignant terms with regard to the attempt to withhold public documents. But on being informed that certain

officials would get into serious trouble, I at once sent the documents back, and wrote to Mr. Hunt, Ass't Engineer, asking to have the documents lent to me again. Several days later the City Engineer's Department phoned to me, and said I might have copies of plans. I sent my Chief Assistant to interview them. He requested to read the Bartel report but was not permitted to do so. The only concession made was to permit three unimportant plans out of thirteen to be sent to the blue printers.

When the Army Board was appointed it was conceded that a fair deal would be given all parties, although there were misgivings owing to the fact that the money voted was insufficient and the time too short to permit of them preparing reliable data themselves, and having to depend on data prepared by the City Engineers, who notoriously favored Hetch Hetchy.

Now I have a great deal of sympathy with the proponents of the Mokelumne projects; if their bonds have deteriorated in value it is largely on account of misrepresentations made by the City Engineers regarding their project, and owing to the fact that [117] more honest reports favoring them have been suppressed.

Eugene J. Sullivan is only a unit amongst many interested in this property, and these people, as it now turns out, have not been given a 'dog's change.' A grave injustice has been done them in the various reports made against their properties, and in the suppression of report favoring them. We therefore feel that a Commission should be appointed to take

evidence in this matter, and that justice should finally be done. The public rely on your committee to see to this. I feel that what I say is right and I shall continue to fight for it.

I am,

Very respectfully yours,

TAGGART ASTON.

P. S. Kindly consider all my correspondence as official and public. T. A.”

[Letter, Dated July 15, 1913, from Scott Ferris to Taggart Aston.]

“July 15, 1913.

Mr. Taggart Aston,
San Francisco, California.

My dear Sir:

Your esteemed communication of recent date is before me, and I note carefully what you say.

I will be glad to confer with the California delegation regarding the matters referred to in that letter.

Very sincerely yours,

SCOTT FERRIS.”

[Letter, Dated July 31, 1913, from Scott Ferris to Taggart Aston.]

“July 31, 1913.

Mr. Taggart Aston,
Foxcroft Building,
San Francisco, California.

My dear Sir:

Referring to our recent correspondence regarding the Hetch Hetchy bill, beg to say, the features commented on by you, together with the entire corres-

pondence, was called to the attention of the committee at its last meeting on July 30th.

SCOTT FERRIS." [118]

Thereupon there was read from a verified copy of the proceedings of the Public Lands Committee of the House of Representatives, a colloquy which occurred between the members of the committee on June 28, 1913, with respect to the form of telegram that should be sent to Eugene J. Sullivan, whereupon the following telegram was drafted by the committee and sent:

[Telegram of June 28, 1913, from Public Lands Committee to Eugene J. Sullivan.]

Since wiring you this morning it has been stated before the committee that you have financial interests in the Blue Lakes as source of water supply, and are now seeking delay in your own and your company's interest. If you have any evidence in support of conspiracy charge, committee will delay matter until Monday, July 7 next, to give you a chance to produce it. Reply at once."

Said proceedings further show that thereupon the following occurred:

[Extract from Proceedings of Public Lands Committee.]

"Mr. DECKER.—As far as I am personally concerned I want my position to be understood. I would be willing to take the statements of Mr. Nolan, Mr. Kahn, and these other gentlemen, and not believe this man out there, because we have been reading in the papers for the last 12 years that they are short of water in San Francisco. Mr. Pinchot, I

believe, mentioned the fact that they need water out there, and the Forestry Service, and Mr. Lane, who has some standing in California, testified in favor of this proposition. But this gentleman has made some statements; I do not look at them as charging a scandal; he has stated they do not need any water. That is a question of fact and not a question of scandal. He has made a charge, by inference, that the army board accepted false data from the city, and we can call the army board before us and question them more closely about how they got their information. But it looks to me as though there is no use in sending that telegram in a way which would indicate that he was discredited; he is an American citizen; he is out of jail; he stands unimpeached, and he has wired this committee and wants it to be treated officially, that he knows something about this subject, and my judgment would be that it is the duty of this committee to wire him that we will wait until July 7 to hear him and that we will hear him in full if he will come. That is my opinion about it." [119]

The witness Sullivan then testified that he received the telegram from the Chairman of the Public Lands Committee of the House of Representatives, notifying him that the meeting of said committee had been adjourned to July 7th, 1913, in order that the matters represented to said Committee by the plaintiff and others might be more fully heard. Further that he appeared before said Public Lands Committee on July 7, 1913, without the approval of the plaintiff, and that he went to Wash-

ington in answer to the notice of the adjourned meeting of said Public Lands Committee, for the purpose of removing aspersions cast upon the properties of the Blue Lakes Company and upon his own character. The witness further testified that Percy V. Long, City Attorney of the City and County of San Francisco, and M. M. O'Shaughnessy, City Engineer of the City and County of San Francisco, were present and participated in said hearing on July 7, 1913, on behalf of the City and County of San Francisco. Plaintiff then read to the jury the following extracts from the proceedings of said Committee on Public Lands of the House of Representatives, as shown by said certified copy thereof:

[Extract from Proceedings of Committee on Public Lands.]

“The CHAIRMAN.—Is Mr. Aston connected with the Sierra Blue Lakes Water and Power Company?

Mr. SULLIVAN.—Yes, sir; he is the consulting engineer.

The CHAIRMAN.—He is in the employ of the company?

Mr. SULLIVAN.—Yes, sir.

The CHAIRMAN.—Is he on a salary?

Mr. SULLIVAN.—Well, I would say contingent.

Mr. DECKER.—Contingent on what?

Mr. SULLIVAN.—He represents other people, who are about to negotiate for its sale.

Mr. DECKER.—His salary is contingent upon what? If it is contingent, what is it contingent

upon? Will he get his money whether the property is sold or not?

Mr. SULLIVAN.—Yes, sir.

Mr. DECKER.—You say it is contingent. Do you understand what contingent means? Contingent means that it depends upon something. What does it depend upon?

Mr. SULLIVAN.—Not on the sale to the city by any means.

Mr. DECKER.—Well, what is it contingent upon?

Mr. SULLIVAN.—I will correct that. His pay comes from the people who are negotiating for the property.

Mr. FRENCH.—Is he in the employ of your company?

Mr. SULLIVAN.—Yes, sir.

Mr. DECKER.—You are the president of the company?

Mr. SULLIVAN.—Yes, sir. [120]

Mr. DECKER.—Then you should know what he gets and where he is to get it from.

Mr. SULLIVAN.—I do.

Mr. DECKER.—How much is he going to get?

Mr. SULLIVAN,—Mr. Aston gets part of his expenses from our company and part paid by the people negotiating for the property, and he receives, I think, 10 per cent upon the sale.

Mr. DECKER.—His salary is contingent upon the sale of the property?

Mr. SULLIVAN.—But not to the city.

Mr. DECKER.—To anybody?

Mr. SULLIVAN.—Yes, sir.

Mr. DECKER.—He is not likely to sell it to anybody but the city?

Mr. SULLIVAN.—We are not looking particularly to San Francisco.

Mr. DECKER.—There are other cities?

Mr. SULLIVAN.—Yes, sir. . . .

The CHAIRMAN.—Mr. Aston is the engineer of the company of which you are the president and must have been under your control?

Mr. SULLIVAN.—No, sir, he also represents other interests, and I cannot say that he is entirely under my control.

The CHAIRMAN.—You are the president of the company, are you not?

Mr. SULLIVAN.—Yes, sir.

The CHAIRMAN.—How much interest in that company do you own?

Mr. SULLIVAN.—I own 100 shares.

The CHAIRMAN.—What are the shares worth?

Mr. SULLIVAN.—I was offered for the property, two and a half years ago, \$2,600,000.

The CHAIRMAN.—For the entire property?

Mr. SULLIVAN.—For the entire property.

The CHAIRMAN.—By whom was that offer made?

Mr. SULLIVAN.—By Mr. Scribner.

The CHAIRMAN.—By whom?

Mr. SULLIVAN.—By Mr. O. Scribner.

The CHAIRMAN.—Who is Mr. O. Scribner?

Mr. SULLIVAN.—He was formerly the general manager of the Associated Oil Co.

The CHAIRMAN.—For what purpose did he desire the property?

Mr. SULLIVAN.—He desired it for power and irrigation purposes, I should think.

The CHAIRMAN.—How many shares of stock were issued at the time you had this offer of \$2,600,000?

Mr. SULLIVAN.—How many shares? The capital stock of the company is 7,500 shares.

The CHAIRMAN.—And you own 100 shares?

Mr. SULLIVAN.—Yes, sir.

The CHAIRMAN.—Did you own 100 shares at that time?

Mr. SULLIVAN.—Yes, sir.

The CHAIRMAN.—What did you pay for those 100 shares? [121]

Mr. SULLIVAN.—Why, we organized the company.

The CHAIRMAN.—Is that all you had to do?

Mr. SULLIVAN.—We took over some property. The situation of the property is this: The property which was taken over was known as the Sierra Nevada Water & Power Co.

The CHAIRMAN.—What did you pay for it?

Mr. SULLIVAN.—There was a bond issue on that property of \$1,250,000, and that is still against the property.

The CHAIRMAN.—So the property at this time is encumbered for how much?

Mr. SULLIVAN.—\$1,250,000.

The CHAIRMAN.—Who holds these bonds?

Mr. SULLIVAN.—A great many people. And

besides that there is another property of our own known as the Blue Lakes property. There is no bond issue on that.

The CHAIRMAN.—How much actual cash did you put in that property yourself at any time or at all times?

Mr. SULLIVAN.—How much actual cash?

The CHAIRMAN.—Yes; for your 100 shares.

Mr. SULLIVAN.—Well, I think the property altogether stands me at about \$100,000. . . .

The CHAIRMAN.—And you employed Mr. Taggart Aston as the engineer of your company, did you not?

Mr. SULLIVAN.—Mr. Aston was employed by a gentleman who represents some Englishmen; I can not call his name.

The CHAIRMAN.—Is he one of your company?

Mr. SULLIVAN.—No, sir.

The CHAIRMAN.—Who employed him to perform the services for your company that he is now performing?

Mr. SULLIVAN.—I did.

The CHAIRMAN.—You did?

Mr. SULLIVAN.—Yes, sir; I did.

The CHAIRMAN.—You employed Mr. Taggart Aston as the engineer of this company?

Mr. SULLIVAN.—Yes, sir.

The CHAIRMAN.—What is the date of that employment?

Mr. SULLIVAN.—I cannot say offhand, but it was about two months ago.

The CHAIRMAN.—About two months ago you

employed Mr. Taggart Aston to serve this company in the capacity of engineer?

Mr. SULLIVAN.—Yes, sir.

The CHAIRMAN.—Was it before or after you telegraphed me here opposing this Hetch Hetchy plan?

Mr. SULLIVAN.—It was before.

The CHAIRMAN.—Have you a copy of your contract with Aston?

Mr. SULLIVAN.—Not with me.

The CHAIRMAN.—You agreed to give him 10 per cent of the entire proceeds of the sale of this property in the event a sale was made, did you not?

Mr. SULLIVAN.—If he made a sale to this English syndicate.

The CHAIRMAN.—Was he limited to the English syndicate?

Mr. SULLIVAN.—Yes, sir; that has been understood in all the talks I had with him. [122]

The CHAIRMAN.—Suppose that you could bring about a sale, or suppose Mr. Aston could bring about a sale, of this property to the City of San Francisco; you would have to pay him 10 per cent of the proceeds, would you not?

Mr. SULLIVAN.—I never had any bargain with him at all in regard to that. His commission was to be entirely on a sale to the English syndicate.

The CHAIRMAN.—Do you state now that Taggart Aston was only employed to sell this Blue Lakes property to one specific concern?

Mr. SULLIVAN.—I do.

The CHAIRMAN.—Are you sure you are correct about that?

Mr. SULLIVAN.—Yes, sir.

The CHAIRMAN.—Are you sure that he is not now in the employ of your company to bring about a sale of this property to the City of San Francisco or anybody else he can?

Mr. SULLIVAN.—No, sir.

The CHAIRMAN.—I have a letter from Mr. Taggart Aston in which he says he is in your employ and in the employ of your company. That appears in ever paragraph, that he is in the employ of you and your company.

Mr. SULLIVAN.—I so regard him. He is in my employ conjointly with this English syndicate.

The CHAIRMAN.—Is not Mr. Aston in your employ now and is it not a fact that you are now asking for a continuance of this hearing to the end that he may prepare and present data here for the specific purpose of defeating the Hetch Hetchy proposition and to aid in the sale of this property to the city?

Mr. SULLIVAN.—I would not say that.

The CHAIRMAN.—Well, how far is that from the fact?

Mr. SULLIVAN.—A good deal. I want to state that there is an available supply there, and this report has been suppressed, and if the army engineers had seen that report, I feel that their findings might have been different.

The CHAIRMAN.—For what reason could this committee or the City of San Francisco be interested in the Blue Lakes property, except for the pur-

pose of purchasing it for a water supply, and what other purpose could Mr. Aston have in trying to influence or bring about the adoption of that system by the City of San Francisco rather than the Hetch Hetchy supply?

Mr. SULLIVAN.—The proposition is this: If there is any other available supply without going to Hetch Hetchy, Congress ought to know it. . . .

The CHAIRMAN.—You are acquainted with Mr. Franklin K. Lane, are you not?

Mr. SULLIVAN.—Yes, sir; he is a fine man.

The CHAIRMAN.—You look upon him as a good and patriotic man?

Mr. SULLIVAN.—He is the finest man that ever left California.

The CHAIRMAN.—What would be your decision in the matter if you were told that Mr. Lane came before this [123] committee and told us emphatically and earnestly that there was no doubt whatever but that this was the best and most available water supply for San Francisco?

Mr. SULLIVAN.—As I have said, Mr. Phelan and Mr. Lane, in my judgment, based their opinions upon reports filed by Mr. Manson and Mr. Grunsky, which reports were false.

The CHAIRMAN.—Then, you do not allege that they are interested parties?

Mr. SULLIVAN.—No, sir; not at all; they are magnanimous men.

The CHAIRMAN.—You do not say that they are not acting in behalf of the general welfare?

Mr. SULLIVAN.—They are absolutely fair.

The CHAIRMAN.—What would you say about Mr. Pinchot? Do you regard Mr. Pinchot as a good man?

Mr. SULLIVAN.—I do not know him.

The CHAIRMAN.—Do you know of his reputation regarding water-power sites?

Mr. SULLIVAN.—I cannot say that I do.

The CHAIRMAN.—Do you know of his reputation concerning conservation generally?

Mr. SULLIVAN.—I cannot say that I do.

The CHAIRMAN.—Then you have no opinion as to whether the committee should give force and credence to his views on this matter?

Mr. SULLIVAN.—No, sir.

The CHAIRMAN.—Do you know Mr. George Otis Smith, the Director of the Geological Survey?

Mr. SULLIVAN.—No, sir.

The CHAIRMAN.—Then you do not care to express an opinion as to whether the committee should give weight and credence to his testimony on the subject?

Mr. SULLIVAN.—No, sir.

The CHAIRMAN.—Do you know Mr. F. H. Newell, the Director of the Reclamation Service?

Mr. SULLIVAN.—No, sir.

The CHAIRMAN.—Then you do not care to express an opinion as to what weight and credence the committee should give his views on the subject?

Mr. SULLIVAN.—No, sir.

The CHAIRMAN.—Do you know the head of the Forestry Service, Mr. Graves?

Mr. SULLIVAN.—I have heard of Mr. Graves.

The CHAIRMAN.—In your opinion, what weight and credence should the committee give his testimony in the matter?

Mr. SULLIVAN.—I do not know Mr. Graves, but I recall that a man who is very strong in the Forest Service made some statement to a friend of mine about the great value of this property. It strikes me that Mr. Graves stated that the power rights on this property were away up; I think he said they were worth \$10,000,000, or something of that kind.

The CHAIRMAN.—Do you know the city engineer of San Francisco, Mr. O'Shaughnessy?

Mr. SULLIVAN.—Yes, sir.

The CHAIRMAN.—You look upon him as a good man?

Mr. SULLIVAN.—Yes.

The CHAIRMAN.—Do you know Percy Long, the city attorney? [124]

Mr. SULLIVAN.—Yes; I know Mr. Long.

The CHAIRMAN.—How do you regard him?

Mr. SULLIVAN.—Well, personally he is a good fellow.

The CHAIRMAN.—Are you acquainted with the 11 Members of Congress from California?

Mr. SULLIVAN.—Yes, sir.

The CHAIRMAN.—Do you know all of them?

Mr. SULLIVAN.—I know them by reputation.

The CHAIRMAN.—How would you regard their statements before this committee?

Mr. SULLIVAN.—They are fine gentlemen, honorable men.

The CHAIRMAN.—How about Mr. Phelan?

You look upon him as a very prominent citizen of California, do you not?

Mr. SULLIVAN.—Yes, sir; I was associated with him in beating the combined bosses in the part of the city in which I lived in the year 1900.

The CHAIRMAN.—Do you know, as a matter of fact, that all of the men I have mentioned, basing their views upon reports and investigations of army engineers and civil engineers, have come before this committee and testified as to the necessity and feasibility of this project?

Mr. SULLIVAN.—In regard to Mr. Lane and Mr. Phelan, and possibly Mr. Long and the other gentlemen, in looking over the municipal reports of San Francisco for a number of years back, I find reports by Mr. Grunsky and Mr. Manson—

The CHAIRMAN.—(Interposing.) I prefer that you would not go off on that. I stated to you a simple question, whether or not you knew, as a matter of fact, that they had done that.

Mr. SULLIVAN.—I understand that they have favored Hetch Hetchy; yes, sir.

The CHAIRMAN.—Each and very one of them?

Mr. SULLIVAN.—Yes, sir.

The CHAIRMAN.—Has your opportunity to gather information and facts been superior to all of the gentlemen I have mentioned, including the 11 Members of Congress?

Mr. SULLIVAN.—I never had an opportunity to present my views to these gentlemen.

The CHAIRMAN.—You had an opportunity—

Mr. SULLIVAN.—(Interposing) I just arrived

here, and I would like to show what I have got. I just arrived here at 10 o'clock, after a five days' trip from San Francisco, and it is my pleasure to show you gentlemen this proposition in all its details.

The CHAIRMAN.—We are not in the real estate business.

Mr. SULLIVAN.—I know, and that is not the spirit, gentlemen at all, but to show that there are available supplies. I do not care about San Francisco buying this; I only want to show this committee—

The CHAIRMAN.—(Interposing.) I want to ask you if you do not think, as a citizen, as a man, and as the president of a rival contending supply, that you are taking a good deal of responsibility on yourself to set up your judgment and your views—interested, as they must be, from your ownership in that property—as against the views of 11 Members of Congress, the Secretary of the Interior, the Secretary of Agriculture, the head of the Reclamation Service, the head of the Geological Survey, the head of the Forestry Service, [125] the army board, and Gifford Pinchot, the national conservationist?

Mr. SULLIVAN.—I feel this, gentlemen, that if those gentlemen which you name knew this property as I know it, know the truth about it, they would all be in favor of the Blue Lakes proposition.

The CHAIRMAN.—But you admit that you are an interested party, do you not?

Mr. SULLIVAN.—Unfortunately I am.

The CHAIRMAN.—And you do not contend that any of the gentlemen I have named are pecuniarily

interested parties?

Mr. SULLIVAN.—Not at all; absolutely no, sir.

The CHAIRMAN.—Then what would you say this committee should do, in the face of one man appearing here who has an ownership in the proposition, who is the president of a rival concern, as against this array of witnesses who come here without any pecuniary interest whatever?

Mr. SULLIVAN.—I would say this, gentlemen, that you give my engineers a chance to appear before your committee and ask for the production of the Bartell report from the city engineer's office.

The CHAIRMAN.—Well, just let me interrupt you right there; I do not want to be harsh at all, but when you wired us on the 22d— and I hold your telegram in my hand—you had seen a photographic copy of the Bartell report; then you received a telegram from us notifying you to come here on the 7th of July, when we would hear you fully, and I can not fathom why you did not bring that report here to-day and exhibit it to the committee.

Mr. SULLIVAN.—As I have stated, Mr. Ferris, I was tied up for two weeks on a jury, under the strict orders of the Superior Court of my city, and I could not even go to my family; I was under the custody of the sheriff in the police-graft cases in San Francisco.

The CHAIRMAN.—It would not have required much time to get the photographic copy of the report and bring it here.

Mr. SULLIVAN.—Mr. Aston was to come on with

me, but unfortunately he was sick the day I left there, but he would like to present his complete report to you and answer any engineering questions that would come up from able engineers; that report would be ready in a few weeks. It is for that reason that Mr. Aston is not here, because he was taken sick. However, I feel that I can telegraph and get the suppressed report.” [126]

Thereupon the following question was asked of the witness Eugene J. Sullivan:

“Q. In your appearance before the Public Lands Committee, did you report to them that it would take the entire Mokelumne supply—that the so-called Bartell suppressed report took in the entire Mokelumne catchment as a source of supply to the City of San Francisco and not your property singly?”

Counsel for the defendants objected to said question on the ground that it was immaterial, irrelevant and incompetent. The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 2.

To said question the witness answered: “I did.”

Thereupon, the following questions were asked and the following proceedings occurred in the examination of said witness Eugene J. Sullivan with reference to the properties of said Sierra Blue Lakes Water and Power Company of which he was president:

“Mr. BLAKE.—Q. Mr. Sullivan, how much, as near as you can recollect, have you expended on the

company's water properties, in construction and in other works and matters, in order to maintain your company's and the bondholders, water rights and other rights since you became president of the company in 1910?

Mr. BARRETT.—Objected to on the ground that it is immaterial, irrelevant and incompetent.”

The Court overruled said objection and counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 3.

To said question the witness answered: “About \$100,000.” [127]

“Mr. BLAKE.—Q. Was it necessary to obtain such moneys from time to time in order that the company's water rights and properties be maintained for the benefit of the bondholders and stockholders of the Sierra Blue Lakes Water and Power Company, of which you were the president?

Mr. BARRETT.—That is objected to on the ground that it is immaterial, irrelevant and incompetent.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 4.

To said question the witness answered: “It was.”

“Mr. BLAKE.—Q. Did you consider them to be of such value that you would feel justified in paying heavy interest or making heavy sacrifices in order that you should obtain money necessary to obtain such rights and properties for your company and on

behalf of your bondholders?

Mr. BARRETT.—That is objected to on the ground that it is immaterial, irrelevant and incompetent.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 5.

To said question the witness answered: “Yes, sir.”

“Mr. BLAKE.—Q. I will ask you, Mr. Sullivan, whether or not during the time since you became president of the company, you have had outstanding any options for the purchase, whether you have given any options for the purchase of your properties, upon which a considerable consideration was paid down?

[128]

Mr. BARRETT.—That is objected to on the ground that it is immaterial, irrelevant and incompetent.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 6.

To said question the witness answered: “Yes, sir.”

The witness further testified that in the month of May, 1913, he executed a power of attorney to Richard Keatinge and Richard H. Keatinge, his son, giving them power to sell the properties of the Sierra Blue Lakes Water & Power Company, and that the witness' commission agreement with plaintiff ceased upon the execution of said power of attorney.

Upon cross-examination the witness testified that

his going to Washington was for the purpose of laying before the Committee of Public Lands of the House of Representatives the facts with respect to the properties of the Sierra Blue Lakes Water & Power Company and to vindicate aspersions that had been put upon that company. There was here read in evidence an extract from the proceedings of the Public Lands Committee of the House of Representatives showing that at said time the witness testified as follows:

[**Extracts from Proceedings of Public Lands Committee.**

“Mr. RAKER.—Going right back again, it must be a fact, from your position and from your whole attitude before the committee now, that you want to demonstrate to the committee and Congress that there is another water supply there that is adequate and cheap, and you want to sell it to the City and County of San Francisco, is not that right?”

Mr. SULLIVAN.—That is my position; yes, sir.”

The cross-examination of the witness then proceeded as follows: [129]

“Mr. BARRETT.—Now, will you reconcile with what I have just read to you your statement on direct examination this morning that you went to Washington to vindicate the position that you had taken with respect to your plant, and so forth? Will you reconcile it with this statement to the committee that you went there and you agitated against Hetch Hetchy to sell your plant to San Francisco?”

The WITNESS.—Mr. Barrett, I would like to explain my position in Washington. I arrived in

Washington at half past nine o'clock. I telephoned—

Mr. BARRETT.—(Intg.) Pardon me, Mr. Sullivan. As you are going into an explanation, I will address your attention to just a little more on the same line, and you can probably answer it all. At page 343 I will read this, which I will incorporate into my previous question:

'Mr. RAKER.—Now, one of the principal reasons of your objection here is that you have a water supply that you believe is available?

Mr. SULLIVAN.—Yes, sir.

Mr. RAKER.—Your purpose is to present to the committee the idea that your supply ought to be bought by the City and County of San Francisco?

Mr. SULLIVAN.—Well, we say that it is an ample supply.

Mr. RAKER.—But answer the question. I want to get it directly before the committee. Your purpose is to convey to the committee the idea that you have a good and sufficient water supply?

Mr. SULLIVAN.—Yes, sir.

Mr. RAKER.—And that it is the duty of San Francisco to buy your supply of water, reservoir site, etc.?

Mr. SULLIVAN.—Yes, sir, I believe that is a fact, with a saving of millions of dollars to the city.'

Now, I will ask you, do those extracts, which you testified to before the committee at Washington, represent truthfully your purpose in going there represented by your testimony this morning.

The WITNESS.—My purpose is represented by

my testimony this morning. I want to say this in extenuation of my appearance before the House Committee; I arrived at Washington at half past nine o'clock; I telephoned to the Hon. Scott Ferris my arrival in Washington, and asked for a few minutes to consult my attorney and get my breakfast, et cetera. He said that the committee went on promptly at ten o'clock. I appeared before the committee and made my little talk, and then was subjected to a very [130] severe examination, without the assistance of counsel, without any one to object to a question, everything went, and I was—to use a word—rattled toward the end, and I made statements there that, on reflection, I would not have made.

Mr. BARRETT.—Do these that I have just read to you constitute statements that you made there which upon reflection you would not have made?

The WITNESS.—Yes, sir.

Mr. BARRETT.—Then it is not true, as you told the committee, that you were there because you had an opposition water supply, and you thought San Francisco ought to buy it: That is not true?

The WITNESS.—That was not my purpose in going to Washington.”

During the trial a further statement of the witness, Sullivan, made before the Committee of Public Lands of the House of Representatives, was read to the jury as follows:

“Mr. SULLIVAN.—Mr. Chairman and gentlemen of the committee, I thank you with a fullness of heart for the high privilege of appearing before you

to-day, and yet it is only characteristic of your spirit for fair play that has ever been the stamp of American statesmen. Little did I think until quite recently that the consideration of H. R. 112 and 4319 would occupy your valuable time at this session of Congress, believing that you were convened to consider those vital questions that stand pre-eminently before this country to-day—the currency and the tariff. We had hoped, and still hope, that your honorable committee would defer any action until you heard all the evidence; but, be that as it may, I am here to assist and do all in my humble way to the end that when your honorable committee does act it will do so advisedly and with a complete knowledge of all the facts; and whatever your decision is, I, for one, feel that it will be the expression of the representatives—free and untrammelled—of the greatest country on the globe. My whole nature, gentlemen, revolted and I trembled with rage when I read a few days ago in the daily press of my own city that my telegram to your honorable committee was construed to cast a reflection upon the advisory board of Army engineers. Such, indeed, is far from the truth.

My father was a Union soldier and my four brothers all answered the call of their country in the War with Spain. One was with Dewey on the U. S. S. "Olympia" at the battle of Manila Bay, and the [131] injuries there received on that eventful day—May 1, 1898, have left him a physical wreck to this hour. Another dear brother—noble-hearted boy that he was—gave up his young life following the flag; murdered by being chopped to death by Filipino

bolos while held a prisoner of war amid the jungles of Luzon. As for myself, at 16 years of age I had the honor to serve with the United States Army in the Department of Arizona and New Mexico. From Fort Wingate to El Paso and from Huachucas to Fort Mohave, time and again I have ridden the road. Engraven on my memory that time cannot erase are the recollections of the days of my early manhood in the great Southwest associated with the officers of the line. It was there I formed my high esteem for the personnel of the army. And my long trip from the city by the Golden Gate to the National Capital, if for no other purpose, has amply repaid me, yes, a hundredfold, in giving me an opportunity to say a brief word before this honorable committee of the House of Representatives in expression of the regard and admiration, yes veneration, in which I hold the officers of the United States army."

During the cross-examination of the witness Eugene J. Sullivan, it transpired that the witness had made an offer to the City and County of San Francisco to sell to the City and County of San Francisco the water rights of the Sierra Blue Lakes Water and Power Company on the Mokelumne River as a source of water supply for San Francisco. Thereupon, the following question was asked and the following proceedings occurred during the redirect examination of the witness by counsel for the plaintiff:

"Mr. BLAKE.—Q. Mr. Sullivan, state to the jury whether in your first contact with the city in offering the Sierra Blue Lakes Water and Power Company's properties for a water supply, you went to

them in the interest of the company, or the city came to you in the interest of the city?

Mr. BARRETT.—We object to the question upon the ground it is immaterial, irrelevant and incompetent and not redirect examination.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 7. [132]

To said question the witness answered:

“The City Engineer in October, 1910, sent a communication to the company and in that communication he asked at what price this property could be obtained by the city.” [133]

The witness then identified a letter, dated October 14, 1910, from Marsden Manson to A. F. Martel, as the communication referred to in his letter, and a letter from the witness to Marsden Manson, dated October 29, 1910, as the reply to said letter. Thereupon the following occurred:

“Mr. BLAKE.—We offer these letters in evidence.

Mr. BARRETT.—We object to them as immaterial, irrelevant and and not redirect examination.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designated as their

Exception No. 8.

Said letter from Marsden Manson to A. F. Martel was thereupon admitted in evidence and marked “Plaintiff’s Exhibit 14,” and is as follows:

[Plaintiff's Exhibit No. 14—Letter, Dated October 14, 1910, from Marsden Manson to A. F. Martel.]

“San Francisco, October 14, 1910.

Mr. A. F. Martel,
Box 95, Burlingame,
San Mateo, Co., Calif.

Dear Sir:—

I will be pleased to have from you a statement as to the price for which you will sell to the City, the rights held by your Company on Mokelumne, together with a statement as to the exact nature and extent of these rights and segregation of those obtained by purchase and those obtained by grant, guaranteeing the title in each and every case both to properties and to rights. In addition to this data, I will be pleased to have copies of such maps and engineering reports as you may have which will show the rainfall and run-off, mode of development and cost of work necessary for the full development of the supply and a statement of the capacities of each reservoir, canal and conduit necessary for such development. Give also in this, the maximum development of the works in such units as will enable this office to determine whether it will reach a maximum of 200,000,000 gallons of water per day in its most critical periods.

Respectfully yours,

MARSDEN MANSON,

MM-MLS.

City Engineer.” [134]

Said letter from Eugene J. Sullivan to Marsden Manson was thereupon admitted in evidence and marked “Plaintiff's Exhibit 15,” and is as follows:

[Plaintiff's Exhibit No. 15—Letter, Dated October 29, 1910, from Eugene J. Sullivan to Marsden Manson.]

“October 29, 1910.

Marsden Manson, Esq.,
City Engineer,
Dept. of Public Works,
City.

Dear Sir:—

In response to your letter of the 14th inst., requesting a statement of the nature and extent of the properties and rights, validity of titles, capacity of the Blue Lakes and Sierra Nevada Water and Power Company's holdings on the Mokelumne; together with engineer's reports and maps of same; I am directed to submit to your office the report of Russell Dunn, C. E. and C. M. Burlesan, C. E. on the said properties.

Deeds and abstract of Title can be furnished at any time. In regard to the price will state that I am unable at the present time to submit the figure that the Company would accept, but can assure you that this matter can be arranged satisfactorily should our properties be considered.

I beg to remain,

Very sincerely yours,

EUGENE J. SULLIVAN.”

Thereupon, the following occurred:

“Mr. BLAKE.—Q. I will ask you whether you were present at a meeting of the San Francisco Civic Center, at St. Francis Hotel, on November 5th, at which the question of the city's application for its

Sierra Nevada water supply at Hetch Hetchy was a topic of discussion. A. November 5th of what year? Q. November 5th, 1913. A. I was. Q. State whether or not Mr. O'Shaughnessy and Mr. Percy Long were present at that meeting. A. They were.

Q. Do you recall whether Mr. Aston made a public statement at that meeting substantially as follows—

Mr. BARRETT.—Just a minute. I will object to that as immaterial, and not redirect.

The COURT.—What is the purpose of this?

Mr. BLAKE.—This is for the purpose of fixing definitely upon the officials of the City of San Francisco knowledge of the fact of this suppressed report, and upon the defendant, the Examiner Publishing Company, which was present and reported that meeting.

The COURT.—Well, what of that? What is the materiality of it?

Mr. BLAKE.—The materiality of it is the good faith, the good motives, the justifiable ends of the plaintiff herein in engaging in this activity. That [135] is the gist and the sting of the libelous publication, the absence of good motives and justifiable ends in these particular activities.

The COURT.—Your question is not finished. Finish your question.

Mr. BLAKE.—On the 5th, when former—

The COURT.—The way to ask that question is to ask him if Mr. Aston made a statement with reference to this report, and then let him state what it was, in substance. You must not read from some-

thing because that is putting the words in his mouth. He is your witness.

Mr. BLAKE.—Q. Did Mr. Aston at that meeting make a statement with reference to his connection with the investigation of that particular subject; that is, the water supply?

A. He did.

Q. What did he state at that meeting, according to your recollection as to the connection that he had and the personal interest which he had in making the disclosures which he had made concerning the alleged suppressed report?

Mr. BARRETT.—That is objected to upon the ground it is immaterial, irrelevant and incompetent, hearsay, not redirect, not in the hearing or presence of the defendant, and some five months after the telegram which inaugurated the opposition in Washington, and not relating to the events covered by the alleged libel in any way.

The COURT.—It is purely hearsay to state what he said about his connection. You can ask him if he made any statement about this suppressed report and let the witness answer in such a *way to* show whether it was brought out that there was such a circumstance connected with the transaction.

Mr. BLAKE.—Q. Did Mr. Aston make a statement in connection with the fact of the suppressed report? A. He did.

Q. Did he make a statement to the effect—

The COURT.—Ask him what his statement was.

Mr. BLAKE.—Q. What was that statement, Mr. Sullivan?

Mr. BARRETT.—The same objection, your Honor.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the [136] defendants hereby designate as their

Exception No. 9.

To said question the witness answered:

“He said to the audience that there was a report made by an assistant city engineer named Max J. Bartell on the Mokelumne River upper catchment in which that report said that the Mokelumne River watershed would supply four hundred and some odd—

The COURT.—No, not about the contents of the report he is not asking you; you are being asked as to what he stated as to any suppression of that report.

A. (Continuing.) He stated that there was a report suppressed from the advisory board of engineers on the water supply.

Q. And that was the Bartell report?

A. Yes, sir.”

Thereupon the following occurred

“Mr. BLAKE.—Q. I will ask you to state whether or not Mr. O’Shaughnessy took any notice of the statements made by Mr. Aston and made any reply thereto, any public reply thereto?

Mr. BARRETT.—That is objected to as immaterial, irrelevant and incompetent and hearsay.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which ex-

ception the defendants hereby designate as their

Exception No. 10.

To said question the witness answered: "He did."

"Mr. BLAKE.—Q. So far as you can recall, what was his answer to the statement that there was such a report as Mr. Aston stated to be in existence?"

Mr. BARRETT.—The same objection, your Honor."

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the [137] defendants hereby designate as their

Exception No. 11.

To said question the witness answered:

"He said that Mr. Max J. Bartell was merely one of one hundred and fifty assistants."

Subsequently a copy of the "San Francisco Examiner" of November 6, 1913, containing what purported to be an account of the proceedings of the meeting of the San Francisco Civic Center, was introduced in evidence upon behalf of the plaintiff over the objection of the defendant, and the action of the Court in receiving the same in evidence is hereinafter assigned as error.

**[Testimony of Richard Harte Keatinge, for Plaintiff
—Cross-examination.]**

RICHARD HARTE KEATINGE, a witness on behalf of the plaintiff, testified upon cross-examination, that on May 16, 1913, Eugene J. Sullivan and Adelaide Sullivan, his wife, had executed to the witness and to Richard Keatinge, his father, and to J. R. Pringle, a document reading as follows:

[**Power of Attorney, May 16, 1913, Sullivan et ux. to Keatinge et al.**]

“WHEREAS, the undersigned, EUGENE J. SULLIVAN, and ADELAIDE SULLIVAN, his wife, are the owners of all the capital stock of the Sierra Blue Lakes Water and Power Company; and

WHEREAS said stock appears in the name of the undersigned upon the stock book of said Sierra Blue Lakes Water and Power Company, saving and excepting those shares necessary to qualify directors; and

WHEREAS the undersigned and each of them are desirous of having persons hereinafter named, or any one of them, make sale of said stock, or any part thereof, upon such terms and at such price per share as the undersigned persons, or any one of them, deem advisable:

NOW, THEREFORE, the undersigned and each of them do hereby appoint RICHARD KEATINGE, RICHARD HARTE KEATINGE and J. R. PRINGLE, and each and all of them, their true and lawful attorneys-in-fact, giving unto said Richard Keatinge, Richard Harte Keatinge and J. R. Pringle full power and authority to make sale of any and all of the shares of the capital stock of the above-mentioned Sierra Blue Lakes Water and Power Company upon such terms and at such price per share as in the judgment of said Richard Keatinge, Richard Harte Keatinge and J. R. Pringle, or any one of them, seems meet and proper, [138] and the undersigned and each of them do hereby ratify, confirm and approve any and all acts of said Richard

(Testimony of Richard Harte Keatinge.)

Keatinge, Richard Harte Keatinge and J. R. Pringle, or any one of them, in connection with any sale of said stock of said Sierra Blue Lakes Water and Power Company.

It is the intention of the undersigned that the above power vested in said Richard Keatinge, Richard Harte Keatinge and J. R. Pringle may be exercised by any one of them and nothing herein contained shall in any manner be deemed to be a requirement on the part of the undersigned that a majority of the last-named persons shall be required to act in the event of any sale of said stock.

Full power and authority is given to said Richard Keatinge, Richard Harte Keatinge and J. R. Pringle, or any one of them, to execute and deliver any and all agreements or obligations in any manner appertaining to any sale of said stock. Provided always that the consideration paid for said stock, or any part thereof, shall be actual coin or other tangible property.

IN WITNESS WHEREOF, we have hereunto set our hands this 16th day of May, 1913.

EUGENE J. SULLIVAN.

ADELAIDE SULLIVAN.

State of California,

City and County of San Francisco,—ss.

On this 16th day of May in the year one thousand nine hundred and Thirteen before me, A. H. MACDONALD, a Notary Public in and for said City and County, residing therein, duly commissioned and sworn, personally appeared Eugene J.

(Testimony of Richard Harte Keating.)

Sullivan and Adelaide, his wife, known to me to be the persons described in, whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the City and County of San Francisco, State of California, the day and year in this Certificate first above written.

[Seal]

A. H. MACDONALD,

Notary Public in and for the City and County of San Francisco, State of California, Monadnock Building.

My Commission expires June the 28th, 1915."

The witness further testified that shortly thereafter, in company with his father and the plaintiff, he had gone to [139] Portland to attend a conference with Mr. W. J. Wilsey; that Mr. Wilsey had at that time employed the plaintiff to make a report upon the properties of the Sierra Blue Lakes Water and Power Company, and that on the understanding of the witness the plaintiff was "Mr. Wilsey's man" in the transaction. The witness further stated that he had made an arrangement with Mr. Wilsey with respect to the sale of the properties of the Sierra Blue Lakes Water and Power Company, which agreement was embodied in a written instrument reading as follows:

[Agreement, Dated May 27, 1913, Approved by
Sullivan et ux., Addressed to W. J. Wilsey.]

“May 27, 1913.

W. J. Wilsey, Esq.,
Selling Building,
Portland, Oregon.

Dear Sir:

The undersigned, attorneys in fact for Eugene J. Sullivan and Adelaide Sullivan, his wife, do hereby authorize you to make sale, and the undersigned do hereby obligate delivery, of the entire property and assets of Sierra Blue Lakes Water & Power Company at any time within the period of three months from date hereof for not less than:

(a) One million five hundred thousand dollars cash, plus present debts of Company, less a commission to you of fifteen per cent upon sale price, less amount paid for debts of Company; or

(b) Fifty per cent of all stock of any corporation taking over said property of said Sierra Blue Lakes Water & Power Company. Bonds of such corporation of the aggregate value of One Million Dollars, said bonds to be taken not at their face but at the same price per bond as like bonds shall be purchased at the time of floatation. Five hundred Thousand dollars cash, plus present debts of Sierra Blue Lakes Water & Power Company.

In the event that purchase takes this last mentioned form you are to receive a commission of twenty-five per cent upon value of all money and property paid, less of course the moneys paid to extinguish present debts of company.

(Testimony of Richard Harte Keating.)

For information as to the amount that the present debts of the company will aggregate, you are advised that said debts, outside of a bond issue, do not exceed Fifty Thousand Dollars. Of said bond issue there are outstanding bonds of the value of One Million Dollars or more. The bond holders, however, agreed some time ago to sell for Two Hundred Thousand Dollars. The time of the performance of this last-mentioned agreement by the supposed purchaser has expired, but we are informed that no difficulty will be experienced in taking up all [140] the bonds for Two Hundred Thousand Dollars or even less. In the event that you should deem it advisable at the present time to secure a formal and written extension of this right to purchase, it can be readily done. There has been an oral extension by a majority of the bond holders and by an attorney representing others.

It is understood, of course, that at the time of sale the property will be free from obligations or entanglements of every kind.

Enclosed find copies of our authority to obligate the people above mentioned. If you desire, these copies will be certified to by a Notary Public or any other public officer with a seal whom you may select.

Yours truly,

_____.

Approved:

ADELAIDE SULLIVAN.

EUGENE J. SULLIVAN.”

(Testimony of Richard Harte Keating.)

The witness, Richard Harte Keatinge, further testified that while there was no legal agreement that would have prevented the plaintiff from getting another purchaser, still he understood that it would be a breach of faith on the plaintiff's part to have dealt with anyone else while Mr. Wilsey had this option out; that the option was for their good; also that there was no agreement between the Keatinges and Sullivan, or the Keatinges, Sullivan and Wilsey, whereby they all could have consented to a sale of the properties of the Sierra Blue Lakes Water and Power Company to the City of San Francisco; and that the point that Mr. Wilsey always made in connection with the entire deal was that not only must he be absolutely certain that the Keatings had the right to give him this option, on account of the money that he might make out of the sale, but so that he could keep absolute faith with his people in Europe; that he made that point several times, that if he should fall down on this deal and not be able to deliver to his people in Europe, it would put him in bad with them on other deals.

[141]

[Testimony of Taggart Aston, on His Own Behalf.]

The plaintiff, called as a witness on his own behalf, testified that he was a consulting engineer, forty-one years of age; that his early education had been obtained at Knock Breda Rectory, Belfast, Ireland, in a private school; that he was a British citizen but had taken out his first papers in the United States; further, that his first technical edu-

(Testimony of Taggart Aston.)

education was at the Methodist College of Belfast; that he was an undergraduate of the Royal University of Ireland; that he did not complete his graduation course, because from the age of sixteen to twenty years he was a pupil under Mr. John H. Swiney, the foremost hydraulic engineer in Ireland. The witness further testified that the usual method of training engineers in Great Britain was to have them go as pupils to corporation members of the University of Civil Engineers.. He further testified that he had studied privately and had taken an undergraduate course in the Royal University of Ireland; that his principal work had been in the matter of water supplies; that he had been employed upon some twenty water supplies for small and large cities, among them a water supply for the City of Belfast; also the Cape Peninsula water supply in Capetown, South Africa; both of these matters being very large projects; that he had also done considerable irrigation work in South Africa, having been chief engineer for some important works there, and for the enlargement of one of the biggest dams in South Africa, undertaken as a special officer of the Government there. Further, that hydraulic work had been his principal work, and his principal training, although at other times he had been engaged on the Irish board of works as engineer in charge of the construction of railways, and under the Capetown Government in South Africa as district engineer in charge of the railways there; that he had come into the United States in September,

(Testimony of Taggart Aston.)

1907; that the first work [142] he had done here was as assistant engineer of some electric railway surveys between Sausalito and Richardson's Bay and Petaluma and Santa Rosa; that from that on he was in private practice; he has been the chief engineer on surveys and the promotion of a semi-transcontinental railway from Coos Bay, Oregon, to Boise, Idaho; also that he has been chief engineer for a larger harbor and railroad project in Northern California; that his principal work had been regarding hydro-electric projects and railroad projects and large enterprises of that kind for English and European syndicates.

The plaintiff further testified that he was not in the employ of the Sierra Blue Lakes Water and Power Company or of Eugene J. Sullivan, but in the employ of one William J. Wilsey to whom the Sierra Blue Lakes Water and Power Company had given an option for the purchase of its properties. There was thereupon read in evidence the deposition of said William J. Wilsey theretofore taken by the plaintiff, in the course of which the following questions were asked by counsel for the plaintiff, and the following proceedings occurred:

“Q. 2. State whether or not in or about May, 1913, you employed the plaintiff, Taggart Aston, to make an engineering report upon a hydro-electric and irrigation project in California.

Mr. BARRETT:—I object to the question as immaterial, irrelevant and hearsay.”

The Court overruled said objection. Counsel for

(Testimony of Taggart Aston.)

the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 12.

To said question the witness answered: "I did."

"Q. 3. If you answer the last interrogatory in the affirmative, state in connection with what particular project or property you employed Mr. Aston to make such report. [143]

Mr. BARRETT.—The same objection.

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 13.

To said question the witness answered:

"Known in California as the Sierra Blue Lakes Water and Power Company."

"Q. 4. If you state that the project upon which said report was to be made was that connected with the Sierra Blue Lakes Water and Power Company's properties on the Mokelumne River in California, state whether or not these properties are also known as 'The Sullivan Properties,' and whether or not they are the property of a company of which Mr. Eugene J. Sullivan was at that time the president.

Mr. BARRETT.—The same objection."

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 14.

To said question the witness answered:

"Yes, they are the same properties."

(Testimony of Taggart Aston.)

“Q. 5. State whether or not the report made by Mr. Aston pursuant to his employment by you, was in writing; also whether or not he made more than one such report *to in* connection with these properties.

Mr. BARRETT.—The same objection.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designated as their

Exception No. 15.

To said question the witness answered:

“Yes, he made a supplemental report later which I asked him to make.” [144]

“Q. 7. State whether said report or reports were obtained by you, or were ever used by you, for the purpose of selling the so-called Sullivan properties on the Mokelumne River in California, to the City of San Francisco.

Mr. BARRETT.—The same objection.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 16.

To said question the witness answered:

“No, I never offered anything to the City of San Francisco.”

“Q. 8. State whether or not said report or reports were obtained by you for use exclusively in offering said properties for sale in Europe.

Mr. BARRETT.—The same objection.”

The Court overruled said objection. Counsel for

the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 17.

To said question the witness answered:

“They were.”

“Q. 9. If your answer to the last interrogatory is in the affirmative, state whether or not you offered said properties for sale in Europe.

Mr. BARRETT.—The same objection.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the [145] defendants hereby designate as their

Exception No. 18.

To said question the witness answered:

“I did, I offered the properties for sale in Europe.”

“Q. 10. If you answer the foregoing interrogatory in the affirmative, state whether or not Mr. Aston had an interest, contingent or otherwise, in any sale that you might make of said properties in Europe.

Mr. BARRETT.—The same objection.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 19.

To said question the witness answered:

“No understanding whatever with Mr. Aston as to any commission, but I certainly intended to give him fair commission out of any work I done, but there is no written proposition of any kind. In fact,

(Testimony of Taggart Aston.)

he never asked any questions.”

“Q. 11. If you answer the foregoing interrogatory in the affirmative, state whether or not you informed Mr. Aston who the parties were in Europe with whom you were negotiating the sale of said properties.

A. I informed him of the names of the different people with whom I was negotiating.

Q. 12. If you answer the last interrogatory in the affirmative, state whether or not you notified Mr. Aston as to any particular use or purpose for which said properties were desired by said parties in Europe, if in fact any particular use or purpose was specified.

Mr. BARRETT.—We make the same objection as to that.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the [146] defendants hereby designate as their

Exception No. 20.

To said question the witness answered:

“Yes, I told him what we were figuring on using the properties for, and the purposes were hydro-electric and irrigation.”

“Q. 17. Have you in your possession any writing purporting to be an original offer addressed to Mr. Aston by Eugene J. Sullivan, as President of the Sierra Blue Lakes Water and Power Company, to sell the properties hereinbefore referred to, which said offer is dated March 10th, 1913? If so, please

(Testimony of Taggart Aston.)

attach the same to your answers hereto, marked as one of the plaintiff's exhibits.

Mr. BARRETT.—I object to that as immaterial, irrelevant and incompetent and hearsay.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 21.

To said question the witness answered:

“Yes, I have an offer, but as to the date mentioned I am not prepared to say until I see the original paper.”

“Q. 18. State whether or not you know the general reputation of Taggart Aston in the engineering world, meaning thereby among consulting engineers and among construction engineers and those engaged in promoting and constructing engineering projects in this country and in Europe, or in either of said countries, for the truth and veracity of his reports as a consulting engineer.

Mr. BARRETT.—That is objected to as immaterial, irrelevant and incompetent.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the [147] defendants hereby designate as their

Exception No. 22.

To said question the witness answered:

“Yes, I do.”

“Q. 20. State what Mr. Aston's reputation is in the particulars inquired about in interrogatory No.

(Testimony of Taggart Aston.)

18, in any or all of the quarters aforesaid.

Mr. BARRETT.—That is objected to as immaterial, irrelevant and incompetent.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 23.

To said question the witness answered:

“From all the information that I have been able to secure regarding Mr. Aston, both in America and in Europe, his reputation has been first class.”

[Testimony of Richard Harte Keatinge, for Plaintiff.]

Thereupon, the plaintiff called as a witness RICHARD HARTE KEATINGE, who testified that he was a member of the firm of Keatinge and Sons in the spring and summer of 1913, and that at that time he and his father had an option upon the properties of the Sierra Blue Lakes Water and Power Company on the Mokelumne River. Thereupon, the following questions were asked of the witness by counsel for the plaintiff and the following proceedings occurred:

“Mr. BLAKE.—Q. State whether or not you ever employed Mr. Aston to make any engineering report upon those properties. A. I am in doubt on that point.

Q. Well, make a fair statement of the nature of your relations with Mr. Aston at that time, from which the jury can draw its conclusion with reference to these properties and to any report [148]

(Testimony of Richard Harte Keating.)

which you know he made upon those properties at that time.

Mr. BARRETT.—I object to that as immaterial, irrelevant and incompetent and calling for hearsay.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 24.

To said question the witness answered:

“Mr. Wilsey employed Mr. Aston to make this report—Mr. W. J. Wilsey of Portland. We paid half the expense of making the investigation, but I do not believe that Mr. Aston was ever in our employ. I don't know whether legally he was ever in our employ. We paid half the expense and Mr. Wilsey paid the other half of the expense, but he was Mr. Wilsey's man I should say.”

[Testimony of Clement H. Miller, for Plaintiff.]

Thereupon, the plaintiff called as a witness CLEMENT H. MILLER, who testified that he was present at the Civic Center Meeting of November 5, 1913, at the St. Francis Hotel. Thereupon, the following question was asked of the witness by counsel for the plaintiff:

“Mr. BLAKE.—Q. I will ask you to state whether or not you have any recollection of Mr. Aston making a statement of what his connection was with reference to having disclosed certain facts and conditions surrounding the suppression of the so-called Bartell-Manson engineering report of the City, at

(Testimony of Clement H. Miller.)

that meeting at that time and place.”

Counsel for the defendants objected to said question on the ground that it was immaterial, irrelevant and incompetent and calling for hearsay. The Court overruled said objection and counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 25. [149]

To said question the witness answered:

“Mr. Aston read quite a lengthy statement from manuscript and I have a general recollection of the main points that were covered in that statement.

The COURT.—He simply asked you whether it related to the suppressed Bartell report.

A. It did; yes, sir, it was particularly relating to that suppressed report.”

[Deposition of George A. McCarthy.]

Counsel for the plaintiff thereupon read in evidence the deposition of GEORGE A. McCARTHY theretofore taken in Toronto, Canada, on the 5th day of January, 1915, during which the following questions were asked by counsel for the plaintiff and the following proceedings occurred:

The witness having testified that certain documents, consisting of a report made by Mr. Bartell, Assistant City Engineer of San Francisco, addressed to his superior officer Mr. Marsden Manson, and a number of plans, maps and documents all relating to the capacity of the Mokelumne River drainage as a source of water supply, had been obtained by Mr. Aston from the office of the City Engineer

(Deposition of George A. McCarthy.)

of San Francisco, and that a man representing himself to be an employee or an official of the office of the City Engineer, had come to the office of Mr. Aston in the Foxcroft Building, San Francisco, about midday, and demanded the immediate return of said documents, and further, that the report had thereafter become known as the suppressed "Bartell-Manson report," the following question was asked of the witness by counsel for the plaintiff:

"Q. 11. Do you recall whether or not you went to the office of the City Engineer in the [150] City Hall in San Francisco some time later, and toward the end of June, 1913, for the purpose of inspecting the original of said Bartell-Manson report? A. Yes.

Q. 12. If you answer the foregoing interrogatory in the affirmative, state whom you saw in connection with the object of your errand, and what was said and done between you upon that occasion in connection with said suppressed report.

Mr. BARRETT.—Objected to as immaterial, irrelevant and incompetent, calling for hearsay and *res inter alios acta.*"

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 26.

To said question the witness answered:

"I saw Mr. Bartell and made known the object of my visit which was to obtain use of, if possible, the report and documents which had been returned to

(Deposition of George A. McCarthy.)

his office, or if they could not be removed from the office, to make certain extracts from them. Mr. Bartell produced a copy of the report and examined it in my presence, but would not allow me to again have possession of it or to make any extracts from it.

Q. 16. State whether or not you ever had any conversation with M. J. Bartell, the author of that report, concerning the same. A. Yes."

"Q. 17. If you answer the foregoing interrogatory in the affirmative, state who were present at such conversation or conversations, where they were held; and what was said or done there, with reference to said report. Did you see the original of said report then and there in the possession of Mr. Bartell?

Mr. BARRETT.—We object to that question in part, namely to that part which says 'what was said or done there with reference to said report,' upon the ground that that much of the question is immaterial, irrelevant and incompetent, calling for hearsay and *res inter alios acta*."

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the [151] defendants hereby designate as their

Exception No. 27.

To said question the witness answered:

"The only conversation I had with Mr. Bartell regarding the report was on the occasion of my visit to his office in June, when I again endeavored to

(Deposition of George A. McCarthy.)

obtain the document for purposes of reference. No person was present except Mr. Bartell and he refused to allow the document to again go out of his office or to allow any extracts to be made from it. Mr. Bartell produced the copy of the report, but to the best of my knowledge, it was not the copy we had in the office of Mr. Taggart Aston. The original contained many marginal notes in pencil, which the copy produced by Mr. Bartell did not contain, to the best of my knowledge.

The COURT.—You see, Mr. Barrett, he does not answer the part that you object to.

Mr. BARRETT.—No, your Honor.”

“Q. 23. State whether or not said Bartell-Manson report, together with the maps, plats, diagrams and plans therein referred to thereto attached, showed upon its face that it was prepared by a competent, skillful and conscientious member of the engineering profession.

Mr. BARRETT.—Objected to as immaterial, irrelevant and incompetent, calling for the opinion and conclusion of the witness, calling for expert testimony on a matter not proper and the document itself is the best evidence.

The COURT.—This witness is a civil engineer, is he?

Mr. BARRETT.—Yes, your Honor.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 28.

(Testimony of Taggart Aston.)

To said question the witness answered:

“The report with the plats and diagrams showed that it had been very carefully prepared.” [152]

“Q. 24. State whether or not, if you know, the information and data shown thereby was sufficiently full, complete, and in sufficient detail, to comply, from an engineering standpoint, with the requirement placed upon the City of San Francisco, by the Secretary of the Interior of the United States of America, that it, the said City, should proceed, at its own cost, and expense and with due diligence, to secure data upon which to make the determination mentioned in interrogatory No. 20.

Mr. BARRETT.—I object to the question upon the ground that it is immaterial, irrelevant and incompetent, calling for the opinion and conclusion of the witness and calling for expert testimony, and also being the witness’ construction upon the requirements placed upon the City and County of San Francisco by the Secretary of the Interior.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 29.

To said question the witness answered: “I believe it was.”

[**Testimony of J. S. Dunnigan, for Plaintiff.**]

J. S. DUNNIGAN, called as a witness on behalf of the plaintiff, testified that he was clerk of the Board of Supervisors of the City and County of San Francisco and that he was present in Washing-

(Testimony of J. S. Dunnigan.)

ton on December 2d, 1913, and was at that time representing the City and County of San Francisco in procuring the passage of the Hetch Hetchy Bill; further, that because he had been for many years an "Examiner" employee he had helped in the preparation of the Washington edition of the "San Francisco Examiner," The witness further testified that he knew John Temple Graves; that Mr. Graves was in Washington at the time of the publication of the said Washington edition [153] of the "San Francisco Examiner," and that he was working in the Hearst office in Washington at the time the paper was published.

[Testimony Stanley Behneman, for Plaintiff.]

Thereupon the plaintiff called as a witness, Stanley Behneman, who after testifying that he was a civil engineer in the employ of the Northwestern Pacific Railroad Company in Sausalito, and was in the employ of Mr. Taggart Aston in June, 1913, as an assistant to Mr. McCarthy and Mr. Aston; further, that he was in the office on a day in June, 1913, when an officer, or an employe, of the City of San Francisco, came into the office, made a demand for the return of certain reports, data and documents claimed to be the property of the City of San Francisco, the following question was asked of the witness by counsel for the plaintiff:

"Mr. BLAKE.—Q. Will you state, in your own way, the facts and circumstances in connection with that episode?"

Counsel for the defendants objected to said ques-

(Testimony of Stanley Behneman.)

tion as irrelevant, immaterial and incompetent, as hearsay, as *res inter alios acta*, and without sufficient foundation. The Court overruled said objection and counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 30.

To said question the witness answered:

“It was shortly before one o’clock. This gentleman I didn’t know at the time when he entered the door. He made certain demands.

THE COURT.—Q. Who did he say he was?
A. He said he was from the Engineering Department of the City of San Francisco, and he wished to have certain records and plans which Mr. Aston had taken. I don’t know under what conditions [154] they were taken. He wanted them right away or he would have a warrant issued for them. He appeared to be very excited. He wanted to know when Mr. Aston would return. I told him I didn’t know. He said he would wait a while. He did wait quite a while and then he decided to go and he said that these documents must be back by one o’clock.” He wanted to know when Mr. Aston would return. I told him I didn’t know. He said he would wait awhile. He did wait quite awhile and then he decided to go and he said that these documents must be back by one a’clock.”

The witness here identified a certain document as being in his handwriting, and stated that it was

(Testimony of Stanley Behneman.)

an exact copy of certain calculations attached to a plan of the North Fork Reservoir obtained in the office of the City Engineer made by the witness when the document was in his possession. The document was thereupon marked "Plaintiff's Exhibit 27" for identification.

**[Further Evidence Introduced for Plaintiff, and
Further Testimony of Plaintiff.]**

Evidence was also introduced on behalf of the plaintiff in support of the allegation contained in his complaint that a report of the City Engineer of San Francisco had been suppressed from said Board of Army Engineers. In support of said allegation the plaintiff testified that said report was known as the Bartell-Manson report and was made by one M. J. Bartell, an assistant city engineer of the City and County of San Francisco, and was submitted by him in typewritten form to Mr. Marsden Manson, the then city engineer of San Francisco, under the title "Mokelumne River as a Water Supply for the City and County of San Francisco. Apr. 24, 1912." Also that said report was received by said Manson and was by him annotated in his own handwriting and that the cover thereof bore the endorsement in the handwriting of said Manson—"Ready for typing except refer now to Bartell. (signed) M. M."

Plaintiff further testified that on the page entitled "Critical Period 1907-08," there was a concluding paragraph in the following words: "The critical period August, [155] 1907, to December, 1909, in-

clusive, equals 518 days. 224,408 divided by 518 equals 432 million gallons daily draft available to San Francisco," and further testified that there was appended thereto a notation in the handwriting of Marsden Manson in the words "provided all rights and all reservoirs are secured and utilized. This source under this assumption is sufficient to meet the demands of the region about the Bay of San Francisco when re-enforced from a full development of Lake Eleanor, but the cost is manifestly prohibitive," Also, that at the same place in said report there was a further notation in the handwriting to Mr. Manson in the following words: "put in the capitalized value of the Sierra & San Francisco Power Company plus \$6,000,000. Blue Lakes plus cost of developing 60 M.G.D. later given."

Said Bartel-Manson Report was here received in evidence and marked "Plaintiff's Exhibit 22" A photographic copy thereof is hereto appended and is as follows:

(Here insert.) [156]

[Plaintiff's Exhibit No. 22—Bartell-Manson
Report.]

~~Ready
for typing up
after note to [unclear]
M.M.~~

**MOKELUMNE RIVER AS A WATER SUPPLY
FOR THE
CITY AND COUNTY OF SAN FRANCISCO
APR. 24 1912.**

Note

This report does not
allow for water [unclear]
by 200,000 A of irrigable
land mentioned in the
Finley report of July 1912
unless

Er. Marsden Manson,

City Engineer,

San Francisco, Calif.

Dear Sir:-

Acting on your verbal instructions to investigate the water resources of the Mokelumne River as a probable source of Water Supply for the City and County of San Francisco, after making due allowance for all prior and vested water rights:-

- 1st - Possible ultimate development (in million gallons per day) of the drainage area (537 square miles) tributary to a point on the main River, just below Electra (at elevation 655 feet U.S.G.S. Base), after making due allowance for all prior water rights.
- 2nd - Estimate of the cost of a system of storage, with conduits and pipe lines, etc., necessary to deliver 60 millions of gallons daily to San Francisco. The point of diversion to be just below Electra at elevation 655 feet, U.S.G.S. Base.

As full an investigation as the data at hand will warrant has been made and I present herewith as a result, the following:-

Appendix A: Hydrographic Investigations.

Appendix B: Estimates of Cost for a system of storage, conduits, pipe lines, etc., necessary to deliver 60 millions of gallons daily to San Francisco.

Sheet 1 : Map showing lands held by private owners.

Sheet 2 : Map showing Isohyetes, present water development and so far as known, all possible reservoirs.

Sheet 3 : Mass Diagrams with tables of present and ultimate storage and costs.

Sheet 4 : Regional Map showing route for conduit and pipe line from a point just below Electra to San Francisco.

Sheet 4-A : Profile, Electra to San Francisco.

Sheet 5 : Sheet 2 of Rainfall and Runoff Studies.

Sheet 6 : Sheet 4 of Rainfall and Runoff Studies
High Sierra Runoff Curve

See Barbell

(3)

CONCLUSIONS

- 1st. The possible ultimate development of the 537 square miles tributary to Electra after making due allowance for all known vested water rights, is 250 million gallons daily.
- 2nd. The cost of a system of storage, with conduits and pipe lines, etc., necessary to deliver 60 million gallons daily to San Francisco, is \$40,978,680.00

Respectfully submitted,

Assistant Engineer.

Appendix A.WATER RIGHTS:

The Sierra Blue Lakes Water and Power Company claim practically all the water rights on this Drainage Area excepting 48½ million gallons daily to the Amador Canal (San Francisco Gas and Electric Company) and 16 million gallons daily to the Mokelumne Hill and Campo Seco Ditch. What water rights are held adversely to the Sierra Blue Lakes Water and Power Company can not be definitely determined except by the Courts; ~~however~~, the waters now actually being adversely used are:-

- a. 8,050 million gallons storage owned by the San Francisco Gas and Electric Company.
- b. Over 155 million gallons daily is being ^{used} diverted by ~~the~~ Standard and Amador Canals, ~~owned~~ ^{owned} by the San Francisco Gas and Electric Company. ~~successors to them~~
- c. Over 20 million gallons daily is taken by the Canals of the San Francisco Gas and Electric Company from the drainage area for the water supply of Jackson, etc.
- d. The Volcano Ditch diverts from the drainage area about 10 million gallons daily.

1st. The question as to whether San Francisco could eventually appropriate to its own use the waters now diverted from and used outside of the drainage is dependent entirely upon the uses made of these diverted waters, the highest use for water being for domestic purposes. From all the diversions now being made, part of the waters are being used for domestic supply, and, as to whether the waters not so used can be acquired by San Francisco, rests with the Courts. Therefore,

*to acquire + develop an
adequate supply from
this source*

Drainage Area (as, for instance, the San Francisco Gas and Electric Company) has the right and logically would increase its holdings in the drainage area where possible.

In the future, San Francisco ^{should} ~~will require~~ ^{and the City will be required} ~~all~~ and very ^{will be required} probably more water than the yield of this drainage area.

Therefore, any joint user or owner would have San Francisco at great disadvantage.

As to joint user
As any agreement ^{as to joint user} that could be made with the present owners might and probably would lead to controversy at some future time. ^{consequently} Therefore, it will be assumed for the purpose of this investigation that in case San Francisco shall be required to make use of this source, all water rights on the drainage area tributary to Electra (including vested water rights and their appurtenances) must be acquired by that City.

The following is a list of the names of the
 persons who have been appointed to the
 various offices of the Board of
 Education for the year 1888-89.
 The names are arranged in alphabetical
 order of their surnames.

Appendix A-2

WATER RIGHTS NOT AVAILABLE FOR DIVERSION AT ELECTRA1. Woodbridge Canal

Capacity, 62 second feet or 40 million gallons daily.

Actual amount filed upon not known

2. About 20 million gallons daily of the flow of the Amador Canal is diverted to Jackson and vicinity for domestic and industrial uses.

3. About 10 million gallons daily of the flow of Panther and Tiger Creeks is diverted from the drainage area for mining near Volcans.

4. About 18 million gallons daily is diverted by the Mokelumne Hill and Camps See Ditch from the South Fork for domestic use at Mokelumne Hill and mining in that vicinity.

5. About 10 million gallons daily is diverted from the South Fork by the Clark Ditch for domestic and mining purposes. A portion of these waters are returned to the South Fork above Electra and would contaminate the remaining waters.

THE PROCEEDURE IN DETERMINING THE AMOUNT OF WATER

AVAILABLE TO SAN FRANCISCO IS THEN AS FOLLOWS:-

- 1st The proper allowance for the Woodbridge Canal is deducted from the natural flow at Electra.

- 2nd The amount diverted to Jackson from the Standard and Amador Canals is of course continuous on account of the Storage at Bear River, Blue Lakes, etc. The other rights, with but very little storage, could be made continuous and they will be here so considered. Therefore, after deducting the Woodbridge Canal rights (as above mentioned) the gross yield will be determined and from this, the following deductions must be made:-

20 million gallons daily to Jackson and vicinity	
10 " " " " Volcans Ditch	
18 " " " " Mokelumne Hill and Camps See Ditch	
10 " " " " Clarke Ditch	
<u>56 million gallons</u>	

The net amount of water, after deducting the Woodbridge Canal rights and the 56 million gallons daily as above noted, will thus be considered the amount available to San Francisco.

Stream Flow Data:

The attached table, given as far as known, all the stream flow measurements made on the California canals.

MOKELUMNE RIVER

Season	Runoff Inches Depth on Catchment Area												Total	
	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.		
Lone Star hills 657 sq. mi. 491' Mean Seasonal Rainfall														
1878-79	1(.20)	1(.21)	1(.06)	1(.06)	1(.5)	1.09	2.40	5.21	5.69	6.16	.95	(.29)	(23.70)	() Est. by State Engineer
80	(.04)	(.03)	(.10)	.82	.4	.65	1.13	7.73	8.83	10.27	4.82	.63	(35.53)	()
81	(.04)	(.29)	(.17)	.51	1.72	4.83	1.97	5.42	5.32	2.10	.28	(.17)	(72.92)	() Est. by S.J.B.
Amador Dam 353 sq. miles 55.2' Mean Seasonal Rainfall														
1899-00	0	.29	1.52	1.30	1.64	.72	2.2)	2.36	5.50	2.29	.55	0	18.46	
00-01	.05	.46	.98	1.16	1.41	4.13	2.84	3.15	6.85	5.73	1.07	.35	28.18	
01-02	.13	.29	.68	1.59	.46	1.04	1.46	4.02	6.87	5.39	.78	.15	22.87	
Standard Dam 329 sq. miles 55.5' Mean Seasonal Rainfall														
02-03	.06	.10	.52	1.30	1.13	.98	2.41	4.57	7.77	6.04	1.50	.09	26.47	
03-04	.04	.04	1.34	.71	.63	4.58	6.52	5.88	12.75	8.97	1.57	.20	43.23	
06-07				2.78	2.34	4.58	8.57	10.55	10.90	10.00	8.96	1.30		
08-08	.43	.45	.43	.55	.60	.45								
Electra 537 sq. miles 54.0' Mean Seasonal Rainfall														
1900-01	1(.05)	1(.45)	1(1.00)	1(1.00)	2.14	6.40	4.30	4.24	9.93	7.97	.55	.40	40.93	
01-02	.12	.16	.44											
02-03										5.43	.74	.37		
03-04	.46	.39	1.77	.40	.33	5.00	8.96	7.85	11.62	7.50	1.54	.24	46.06	
04-05	.35	1.78	.39	.68										
Clements 642 sq. miles 42.0' Mean Seasonal Rainfall														
1904-05	.36	(2.50)	.44	.57	.77	1.38	2.54	3.40	4.58	2.89	.34	.23	(20.00)	
05-06	.24	.20	.14	.17	1.79	1.31	4.52	5.10	8.44	10.46	6.35	.64	39.36	
06-07	.35	.34	.43	1.57	2.05	4.51	8.76	7.70	7.57	8.20	5.88	1.27	48.73	
07-08	.45	.50	.41	.59	.96	.66	1.46	3.00	3.41	2.19	.41	.19	14.23	
08-09	.23	.25	.22	.29	5.24	3.67	3.01	4.90	6.67	7.51	1.48	.21	33.68	
09-10	.13	.24	1.66	2.70	2.39	1.52	4.20	5.46	5.54	1.70	.30	.11	25.95	

Appendix A:CRITICAL PERIODS OF RAINFALL AND RUNOFF*following study*

In the consideration of a municipal water supply, provisions should be made so that the supply will be reliable under the most severe conditions. To this end, the source of supply must be such that with reasonably economical facilities, it can be safely depended upon to yield the necessary amount of water during the most critical period of runoff.

From the Rainfall and Runoff Studies, Sheet 2, Sheet 5 of this Report, we find the following critical seasons of rainfall:-

<u>Season</u>	<u>Seasonal Rainfall as a Per Cent of Mean Seasonal Rainfall</u>	<u>Seasonal Rainfall of the Drainage Area Tributary to Electra. (Mean Mean Rainfall 64")</u>
1850-51	40%	21.6"
54-55	75%	40.8"
55-56	62%	33.8"
56-57	64%	34.6"
57-58	65%	35.1"
62-63	57%	30.8"
63-64	48%	25.9"
68-70	70%	37.8"
70-71	68%	36.7"
72-73	72%	38.8"
74-75	63%	34. "
76-77	60%	32.4"
86-87	74%	40. "
87-88	66%	35.6"
88-89	66%	35.6"
95-96	73%	39.4"
97-98	58%	31.3"
1907-08	63%	34.0"

The critical season of 1850-51 is based on very meager data. From 1850-51 to 1862-63 inclusive, there are only two records, Shingle Springs and Sacramento.

In the first 14 seasons (1850 to 1864 inclusive) there were 7 critical seasons, two of which, (1850-51 and 1863-64) if these records be given full credit, are the most severe known. In the last 47 seasons (1864-1911) there are 11 critical seasons, of which the season 1897-98 was the most severe and was immediately succeeded by two seasons of deficient rainfall.

A study of Sheet 5 shows that the Valley Stations (Sacramento, Chico, Marysville, etc.) do not give a fair indication of Sierra conditions. It is therefore, not thought advisable to give much weight to the Sacramento Record of 1880-81.

The record of Nevada City for 1863-64 is of doubtful accuracy.

Nothing is known of the runoff of these earlier critical periods. The earliest runoff records were made in 1878.

For the critical season 1897-98 there is ^{only sufficient} ~~much~~ rainfall and runoff data to serve as a guide in determining the probable runoff of the Mokelumne River area.

The manifest requirement of a source of water supply for San Francisco is that it must meet the necessities of that City for at least one hundred years.

During the time the project is being developed to its ultimate capacity, opportunity and time will have determined whether more critical conditions will have to be met than the Season 1897-98, and should it be found that there shall be periods more severe than 1897-98, the storage will have to be increased to meet these conditions.

In view of the foregoing, it is not thought advisable to consider the earlier critical seasons and the period of 1896-1900, on account of the duration, is adopted as the basis for determining the probable safe yields.

Reference to the table ~~above given~~ of observed runoff on the Mokelumne River Drainage Basin shows that no observations were made for the period 1896-1900. The seasonal runoff can be satisfactorily estimated by use of the High Sierra Runoff Curve ~~(Rainfall and Runoff Studies Sheet A1, Sheet 6 of this report.~~

Attention is especially called to the fact that the measured runoff of the Stanislaus River Drainage Area for the Season 1897-98 is less than that indicated by the High Sierra Runoff Curve. The measured runoff is 7.7" depth on the Drainage Area. The High Sierra Runoff Curve indicates 8.8" depth on the Drainage Area.

This extremely low runoff of the Stanislaus River for the Season 1897-98 was fully considered at the time the High Sierra Runoff Curve was developed and it is thought that the Mokelumne River Runoff can safely be taken from the curve.

A careful study was made to obtain a basis for the distribution of total seasonal runoff to the various months of the Season. The Stanislaus and Tuolumne Rivers are the only nearby High Sierra streams upon which measurements were made during the period 1896-1900. The occurrence of the monthly runoff from both these drainage areas was compared with the occurrence of the monthly runoff of the Mokelumne River Drainage Area for the seasons during which the runoff was measured for the Drainage Areas. The occurrence of the monthly runoff from these three Drainage Areas is in reasonably close ^{accord} ~~agreement~~. It was found that there was no materially different result whether the Stanislaus or the Tuolumne Runoff was applied in determining the Mokelumne River runoff. Therefore the monthly means of the rates of runoff of the Stanislaus and Tuolumne Rivers was taken as the basis for distributing the estimated total seasonal runoff of the Mokelumne River during the period 1896-1900.

On the above basis, the annexed tables were calculated, as follows:-

Mean Seasonal Rainfall for the Drainage Area tributary to Electra is 54.0"

For the Season 1897-98, the rainfall was 58% of normal.
 $58 \times 54" = 31.3" \text{ Rainfall.}$

From the High Sierra Runoff Curve Sheet 6, 31.3" Rainfall gives 12" Runoff.

12" on one square mile = 209 million gallons.

During September 1.22% ran off.

$.0122 \times 209 = 3. \text{ million gallons per square mile}$

From 537 square miles (the area tributary to Electra) the total runoff for September was $537 \times 3 = 1611 \text{ million gallons, etc.}$

EVAPORATION FROM STORED WATER AND OTHER LOSSES.

Losses by evaporation and absorption, etc. were approximated at 10,000 million gallons the critical period (August 1897 to February 1899 inclusive). On the basis of the Lake Eleanor Evaporation records (Sheet 3) the evaporation from the 3,279 acres of stored water would be about 5,000 million gallons.

The losses due to leakage, accident, losses in the natural channels from the dams to the point of diversion, etc., are assumed at 5,000 million gallons.

The attached sheet gives the runoff calculated and distributed previously detailed.

As above mentioned the previous water rights and losses to be provided for are:-

1. Woodbridge Canal - 62 second feet of the natural flow of the stream at Clements.
2. Fifty-six millions of gallons daily must be supplied from the natural stream flow and the system of storage to the five canal systems previously mentioned.
3. For the critical period (August 1897 to February 1899 inclusive) 10,000 million gallons must be allowed for evaporation and other losses.

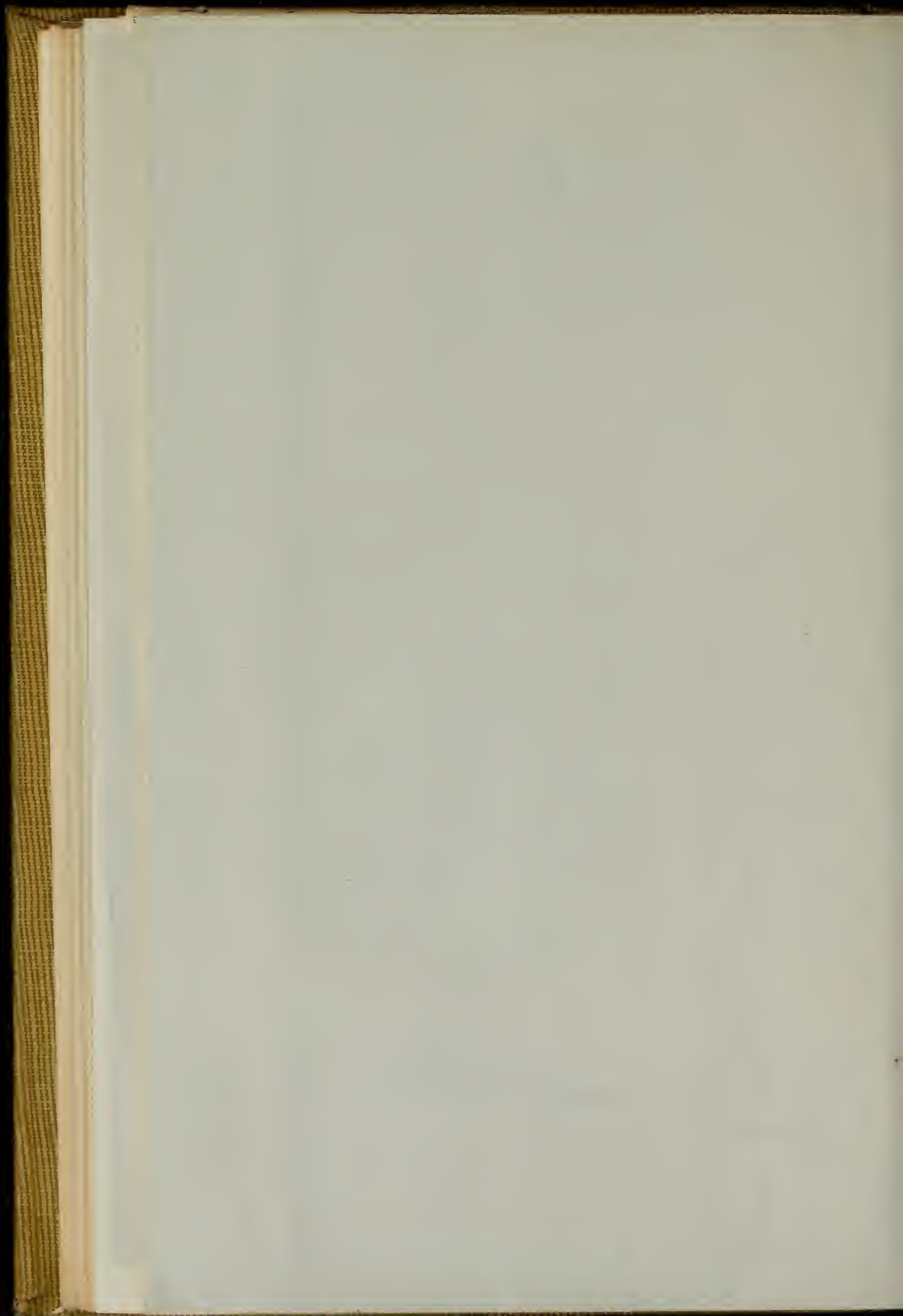
The tables show in detail a possible draft of 306 millions of gallons daily after having provided for the Woodbridge Canal Rights and Evaporation and other losses.

THAT THE WATERS AVAILABLE FOR SAN FRANCISCO ARE 306-56 = 250 MILLIONS OF GALLONS DAILY.

See Mass Diagrams Sheet 3.

Date	Runoff		Draft 300		Evap		Losses		Total	From to	at end of Month	Waste
	Runoff	Evap in Mill.Gals.	Runoff	Evap	From	Total	From to	at end of Month				
Sept	100	4	5100									
Oct	80	2	2100									
Nov	200	0	8000									
Dec	200	10	8000									
Jan	200	10	8000									
Feb	100	2	4200									
Mar	200	0	31800									
Apr	2000	10	68000									
May	3127	10	100900									
Jun	1138	70	30000									
Jul	402	0	12000									
Total			327000									
Aug	20	0	2600									
Sept	100	0	1400									
Oct	100	0	1400									
Nov	100	0	1400									
Dec	100	0	1400									
Jan	100	0	1400									
Feb	100	0	1400									
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Jul	100	0	1400									
Aug	100	0	1400									
Sept	100	0	1400									
Oct	100	0	1400									
Nov	100	0	1400									
Dec	100	0	1400									
Jan	100	0	1400									

but the coal is manifestly protuberant



CRITICAL PERIOD 1907-08:

The flow of the Makelumne River at Clements was observed during the period 1907-08. The probable flow at Alastra was calculated as shown on the attached sheet.

The flow as measured at Clements does not include any of the diverted waters and they are, therefore, automatically provided for, in calculating the amounts of water available to San Francisco it is necessary to provide only for the Woodbridge Canal Rights.

It must be borne in mind that the storage of 8,000 million gallons of the San Francisco Gas and Electric Company was used at Alastra during this period and it was, therefore, measured in the stream flow at Clements. In the consideration of this period, this storage must be deducted from the total storage 80,000 million gallons leaving 72,000 million gallons as the total available.

From the column giving the amounts available after providing for the Woodbridge Canal Rights, the total amount available to San Francisco is:-

161,800 million gallons Total Flow for Period August 1907 to December 1909 inclusive.

92,808 storage mil. gal.

10,000 for evaporation and other losses.

224,408 mil. gal.

The critical period August 1907 to December 1909 inclusive = 518 days. $224,408 \div 518 = 433$ million gallons daily draft available to San Francisco.

provided all rights and all claims be known and utilized, this source under these conditions is sufficient to meet the demand of the region around the Bay of San Francisco.

put in Capitalized value of Sierra Nevada + 600,000,000 + cost of water right for 1908

Date	Mean (U.S.G.S)	62 Sec. feet for Woodbridge	or flow at Alastra	San Francisco	to Mil. Gal. for Month
1907-07					
Sep	202	140	192	140	2710
Oct	190	128	180	128	2560
Nov	248	186	236	186	3600
Dec	876	814	823	814	16280
Jan	1140	1078	1080	1078	21560
Feb	2780	2718	2640	2640	47500
Mar	4880	4818	4830	4830	92600
Apr	4430	4368	4200	4200	81400
May	4220	4158	4000	4000	80000
June	4720	4658	4480	4480	87000
July	2890	2828	3150	3150	61000
Total	27806	26334	25621	25456	498410
Aug	703	641	668	641	12820
1907-08					
Sep	257	196	244	196	3780
Oct	276	214	262	214	4280
Nov	334	172	222	172	3330
Dec	526	266	312	266	5320
Jan	537	477	510	475	9500
Feb	393	331	373	331	6200
Mar	817	755	776	755	15100
Apr	1730	1668	1642	1642	31800
May	1900	1830	1806	1806	36100
June	1846	1792	1700	1700	33200
July	223	167	218	167	3340
Aug	104	42	99	42	840
1908-09					
Sep	135	73	128	73	1410
Oct	142	80	135	80	1600
Nov	124	87	118	87	1200
Dec	161	90	183	90	1880
Total	9330	8276	8667	8219	161800
1909-10					
Jan	2010	2848	2760	2760	55200
Feb	2260	2198	2150	2160	28800
Mar	1620	1608	1580	1580	31600
Apr	2810	2748	2670	2670	51700
May	3710	3648	3520	3520	70400
June	4310	4248	4100	4100	79900
July	824	862	782	782	15640
Aug	115	33	103	53	1060
Total	18009	18213	17671	17615	333900

1	2	3	4	5	6	7	8	9
Date	Mean Seas. Rainfall	Seas. Rainfall as % of total Seas. Rainfall	High Sierra Catchment	Col. 3X by Col. 4	Col. 5X by Col. 2	Total Sq. Mi. Inches for both Areas	Ratio of field of 537 Sq. Mi. to 642 Sq. Mi.	
1906-07	34"	150%	81"	58"	51180	32630	31150	35650
1907-08	25"	150%	345"	141"	1480	6682	6480	26530
1908-09	37"	150%	318"	12"	6000	6682	6480	26530
1909-10	37"	150%	133"	2"	242	6682	6480	26530

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in order to compare the cost of this source with the
Tulare source upon the same basis an estimate
is made of the cost of developing and delivering 60 mgd
to San Francisco from this source. The power used in
and type of construction are the same

INITIAL DEVELOPMENT FOR 60 MILLION GALLONS DAILY TO

SAN FRANCISCO

The original limitations controlling this investigation
(previously mentioned) are:-

1st That the waters now diverted from and used outside
of the drainage area, in addition to the proper allowance
for the Woodbridge Canal, will not be available to San
Francisco.

2nd That all water and reservoir rights, (including
vested rights and their appurtenances) must be acquired by
San Francisco.

It is suggested that San Francisco must acquire all
water rights ^{adversely and} ^{and properties} ^{which} ^{or be excluded to which is}
on the drainage area. The initial development ^{of}
would naturally ^{require} include the rights and appurtenances now ^{after the}
owned by the San Francisco Gas and Electric Company, but
~~for the purposes of this investigation it is not considered~~
~~practicable nor advisable to evaluate these properties, and~~
~~therefore, their purchase will not be assumed in the initial~~
~~development.~~

The initial development ^{of 60 mgd.} should give at least enough
power to pump over Altamont Pass and, if possible, enough
for the City distributing system.

The San Francisco Gas and Electric Company through
its Amador and Standard Canal Rights controls the low flow
of the North Fork, and any North Fork storage would have
this limitation when considered for its auxiliary power.

The Railroad Flat Storage (20,900 million gallons)
appears from full consideration to be the most logical
and it will be adopted for initial development.

THE UNIVERSITY OF CHICAGO

PH.D. THESIS

BY

THE AUTHOR

CHICAGO, ILL.

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Naturally tributary to this Reservoir are 94 square miles of the South and Licking Forks, and 28 miles of the Middle Fork could be made tributary by a 1½ mile canal, and a ¾ mile tunnel, making in all 94 square miles.

The runoff of the 94 square miles, calculated as explained above, is shown on the attached sheet.

The prior water rights are the Clark Ditch (10 million gallons daily) from the South Fork and the Moxelwane Hill and Camps Seco Ditch (16 million gallons daily) from the South and Licking Forks.

Then the maximum draft required from this drainage area is $60 + 10 + 16 = 86$ million gallons daily.

The most severe period for a draft of 86 million gallons daily would be from July to December 1898 inclusive, a 184 days (see table page).

Then, ignoring the stream flow of August and December the total draft would be $184 \times 86 = 15,800$ million gallons.

80,600 million gallons storage of Railroad Flat, less 15,800 million gallons draft leaving 64,800 million gallons or more than enough for evaporation and other losses.

MOXELWANE RIVER DRAINAGE AREA TRIBUTARY TO RAIL ROAD FLAT RESERVOIR. PERIOD 1896-1900

SEASONS	Monthly Runoff as a % of Seasonal Run off	Runoff per Sq Mi in Mil. Gals.	Runoff Tributary to Rail Road Flat Res. 94 Sq. Mi.
1896-97			
Sep	123	8	752
Oct	68	4	376
Nov	288	18	1690
Dec	288	18	1690
Jan	289	18	1690
Feb	1242	79	7430
Mar	932	59	5550
Apr	2020	128	12020
May	3127	198	18600
June	1138	73	6360
July	402	25	2350
Total		626	59008
Aug.		74	470
1897-98			
Sep	122	3	282
Oct	197	4	376
Nov	446	9	846
Dec	692	14	1315
Jan	319	7	658
Feb	559	12	1130
Mar	841	18	1690
Apr	2521	52	4890
May	2703	56	5260
June	1297	27	2540
July	318	5	470
Aug	85	2	188
1898-99			
Sep	29	1	94
Oct	45	2	188
Nov	42	2	188
Dec	120	4	376
Jan	292	11	1035
Feb	284	11	1035
Total for Crit. Per.		245	23031
Mar	1768	66	6200
Apr	3464	92	8650
May	2035	76	7140
June	2378	89	8360
July	437	16	1504
Aug	106	4	376
1899-00			
Sep	38	2	188
Oct	201	11	1035
Nov	814	44	4140
Dec	936	54	5080
Jan	1084	58	5450
Feb	395	21	1970
Mar	1059	57	5360
Apr	1013	55	5170
May	2436	133	12500
June	1628	88	8270
July	275	15	1410
Aug	41	2	188
Total		382	3291

Note 66 sq. mi. are naturally tributary to Rail Road Flat Res. 28 sq. mi. of the Middle Fork can be made tributary by canal and tunnel -

M. J. B. March 1912

2

CONCLUSIONS

1st. The possible ultimate development of the 537 square miles tributary to Electra after making due allowance for all known vested water rights, is 250 million gallons daily.

2nd The cost of a system of storage, with conduits and pipe lines, etc., necessary to deliver 60 million gallons daily to San Francisco, is \$38,086,000.00.

Respectfully submitted,

Assistant Engineer.

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1950

[The same review will be made
of all plans and estimates made for
other projects submitted in connection with
these examinations].

Setback to the west of a river of 6000 to 10000 feet

and pipe lines, etc., necessary to deliver 60 million gallons to San Francisco. The point of diversion to be just below Electra, elevation 685 feet, U. S. to the San Joaquin River

As mentioned in Appendix A, the proposed structures to deliver 60 million gallons daily to San Francisco (20,000 million gallons storage) will store water available at Electra to deliver 60 million gallons daily through the critical period 1896-1900.

Naturally tributary to this Reservoir are 20 square miles of the South and Licking Forks, and 20 square miles of the Middle Fork will be considered made tributary by a 1 1/2 mile canal and a 3/4 mile tunnel making in all 94 square miles.

Proposed structures to deliver 60 million gallons daily to San Francisco:

From the Railroad Flat reservoir the water will be delivered through a 300 second foot canal ten miles to the forebay at a power house on the south side of the Mokelumne River just above Electra.

The elevation of the forebay will be about 2100 feet and the power house about 700 feet, making 1400 feet of effective head.

The power plant will have an initial capacity of 11,000 K.W.

Just below the Electra Power House the water will be diverted by a dam at an elevation of 685 feet to a canal 25 miles in length. The canal follows the contour of the South side of the river to a point about three miles East of Wallace, elevation 800 feet.

Thence by two 50 inch riveted steel pressure pipes 31 miles to the Altamont Pumping Station, elevation 175 feet.

This pipe line will cross in addition to several dry channels and small sloughs, the Calaveras River, Mormon Slough, French Camp slough, San Joaquin River, Tom Payne Slough and Cerral Mellow Brook.

All crossings except the San Joaquin River will be on reinforced concrete trestles.

The San Joaquin River, being navigable, will be crossed by 16 inch submerged pipes.

From the Altamont Pumping Station the route will be common to that proposed for the City's Tuolumne River Supply.

The pipe lines across the San Joaquin Valley will discharge into a receiving reservoir at the Altamont Pumping Station, having a capacity of 30,000,000 gallons. This reservoir will be mainly in excavation and will have a concrete lining. Its water surface will be at an elevation of 175 feet. The water will flow from it through outlet pipes and control valves into a pumping station, the pumps of which will deliver the water into two force mains, each having a diameter of 48 inches. The length of these force mains will be 34,000 feet.

The force mains will deliver into a cut and cover conduit at an elevation of 873½ feet, through which it will flow on a grade of 1.3 feet per 1000 to the entrance of first tunnel, which will be 16,140 feet in length, the elevation of the entrance portal of which will be 685 feet.

The new line will join the Grunsky line at about station 560 of the latter, and follow his line from that point to a point just north of Mission San Jose, at about station 1460 of the Grunsky line.

The pressure portion of this line will consist of two pipes each 50 inches in diameter.

Leaving the tunnel above mentioned, the pipe lines will cross the Livermore Valley, passing about two miles south of Livermore, and the ridge of hills between Valle and Calaveras Creeks will be pierced by a tunnel on the hydraulic grade line. The length of this tunnel will be approximately 13,000 feet.

From the outlet of this tunnel, two pipe lines, each of 50 inches diameter, will convey the water to a tunnel on the hydraulic grade line, piercing the ridge of hills between Calaveras Creek and the Santa Clara Valley. The length of this tunnel will be approximately 8,600 feet.

All the tunnels on this line being on the hydraulic grade line, it will not be necessary to carry the pipe lines through them.

The two 50 inch pipes are to be continued from the outlet of the last mentioned tunnel, and the new line leaves the Grunsky line at a point about 6,000 feet from its outlet portal, and runs thence in a generally western direction to a crossing of the bay at Dunbarton Point.

About 16,000 feet of this line before reaching the bay will have to be carried on trestles, owing to the swampy character of the ground. In this distance is included the crossing of a navigable slough, where about 300 feet of the line will have to be submerged.

The crossing of the bay will be made with three lines of 36 inch pipe, having cast iron joints with spherical hubs of the type used in the present crossing pipes of the Spring Valley Water Company. This crossing will be about 6,400 feet in length.

The three 36 inch pipes are to be connected to the two 50 inch pipes at each end.

On the west side of the bay, the line will run in a generally western direction, joining the Grunsky line again at about his station 2860 near Redwood City. About 2000 feet of this section will have to be carried on trestles.

From this junction with the Grunsky line, it is followed to the southern boundary of San Francisco, where it will deliver the water at an elevation of about 110 feet.

ESTIMATED COST OF THE SYSTEM JUST DESCRIBED

1.	Water Rights of the Sierra Blue Lakes Water & Power Co.	\$6,000,000.00
2.	Railroad Flat Dam, Height 300 feet	4,560,000.00
3.	Diversion Dam on Middle Fork (Estimated)	30,000.00
4.	1½ miles canal (200 sec. ft. capacity)	118,000.00
5.	¾ miles Tunnel (200 sec. ft. capacity)	118,000.00
6.	Conduit from ... Flat Reservoir to Power House opposite Electra, 10 miles, 200 sec. ft. capacity	792,000.00
7.	Fore Bay at Power Plant	40,000.00
8.	Power Plant complete, 11,000 h.p.	440,000.00
9.	Diversion Dam below Electra (Estimated)	300,000.00
10.	Conduit 25 miles, capacity 200 million gallons daily	1,160,000.00
11.	2-50" riveted pipes to Altamont, 51 miles, 94,248,000 lbs.	6,462,700.00
12.	Supports lines from Canal to Altamont, 51 miles	366,000.00
13.	Double circuit transmission line, Electra to Altamont, 121,500# Copper, 550 steel towers	450,000.00
14.	San Joaquin River crossing, 3-36" galv. steel pipes complete	63,000.00
15.	Trestles for crossing Calaveras River, Mormon Slough, French Camp Slough, Tom Payne Slough & Corral Hollow Creek	150,000.00
16.	Receiving Reservoir at Altamont complete	139,000.00
17.	Pumping Stations complete, including auxiliaries & buildings	526,000.00
18.	34,000 feet of double 48" riveted pipe force main from Pumping Station to conduit 13,408,500 lbs.	804,000.00
19.	Cut and cover conduit from force main to summit tunnel, 18,500 feet capacity, 200 million gallons daily	287,500.00
20.	Three lined tunnels 39,240 ft. capacity, 200 million gallons daily	1,373,000.00
21.	Mains connecting tunnels from Summit to N. Y., 293,500 ft. 2-50" riveted pipe complete, weight 117,850,850 lbs.	7,071,050.00
22.	Submerged crossings of slough and bay, 3-36" galv. steel pipes complete, 6,700 feet, Bridges, trestles, culverts and specials,	622,850.00
23.	Supports line from Summit to City Line	435,000.00
24.	Roads and Rights of Way	1,000,000.00
25.	Telephone System	25,000.00
		<u>\$34,148,900.00</u>
26.	Engineering and contingencies, 20%	<u>6,829,780.00</u>
		<u>\$40,978,680.00</u>



BOARD OF PUBLIC WORKS
MAP
 OF THE
 DRAINAGE BASIN OF
MOKELUMNE RIVER
 ABOVE
ELECTRA

SHOWING PRIVATE & PUBLIC LANDS THEREIN
 FROM OFFICIAL RECORDS OF U.S. LAND OFFICE
 AT SACRAMENTO AND COUNTY SEATS.

Prepared under the direction of Norman Hansen-City Engineer
 San Francisco, Cal May-1918

- LEGEND:
- Drainage Basin
 - Canal or Ditch
 - Public Lands
 - Private
 - Land withdrawn for Public Use
 - Proposed Stanislaus Dam Site
 - Water & Power Co.

NOTE.—Rainfall stations are shown thus \bullet JAMES TOWN The term "31 seas" means that during 8 seasons—(Sept to Aug inc), the rainfall season precipitation was observed and recorded at the station. The inches rainfall given is the deduced mean seasonal rainfall for the past 61 seasons.

Most of the rainfall records of stations in the Sierra Nevada Mountains are for periods of less than 30 seasons. The period is known to be too short to give a reasonably accurate mean seasonal rainfall. These short period observations were therefore modified so as to give the probable mean seasonal rainfall for the past 61 seasons briefly as follows:—

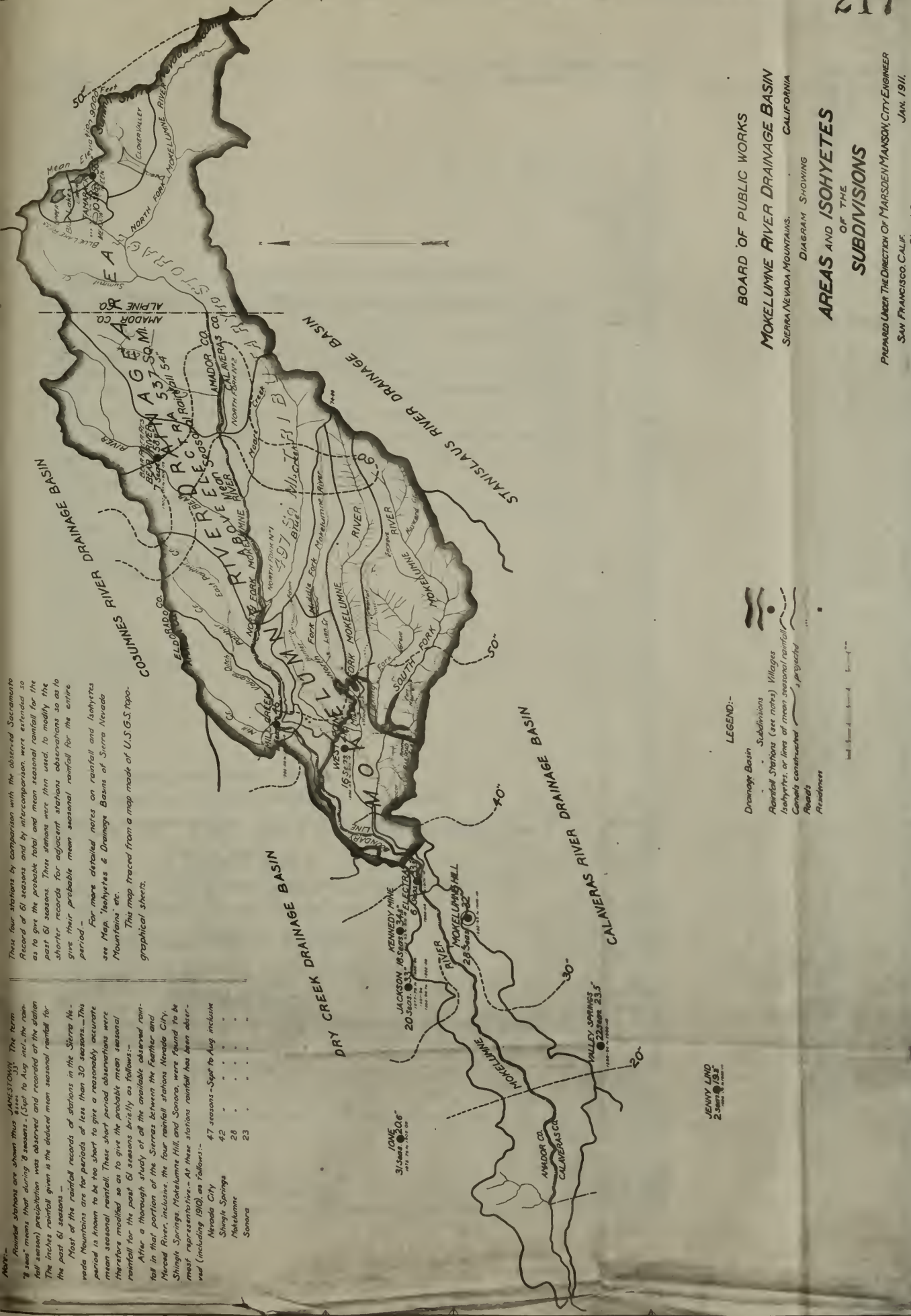
After a thorough study of all the available observed rainfall in that portion of the Sierras between the Feather and Merced River, inclusive, the four rainfall stations Nevada City, Shinglet Springs, Mokelumne Hill, and Sonora, were found to be most representative. At these stations rainfall has been observed (including 1910), as follows:—

Nevada City	47 seasons—Sept to Aug inclusive
Shinglet Springs	42
Mokelumne	28
Sonora	23

These four stations by comparison with the observed Sacramento Record of 61 seasons and by inter-comparison, were extended so as to give the probable total and mean seasonal rainfall for the past 61 seasons. These seasons were then used, to modify the shorter records for adjacent stations observations so as to give their probable mean seasonal rainfall for the entire period.

For more detailed notes on rainfall and Isohyets see Map, 'Isohyets & Drainage Basins of Sierra Nevada Mountains' etc.

This map traced from a map made of U.S.G.S. topographical sheets.



JENNY LIND
2 Seas 15.3
1881-1882

LEGEND:—

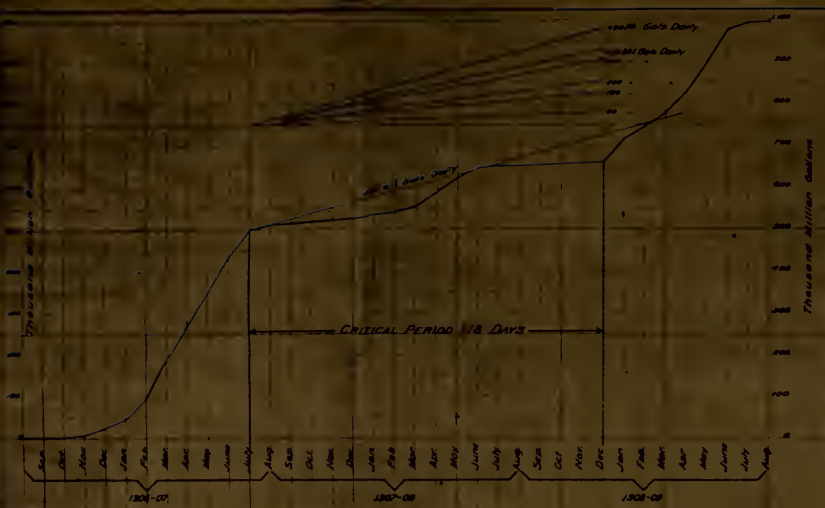
- Drainage Basin
- Subdivisions
- Rainfall Stations (see notes)
- Isohyets, or lines of mean seasonal rainfall
- Canals constructed
- Roads
- Reservoirs

BOARD OF PUBLIC WORKS
MOKELUMNE RIVER DRAINAGE BASIN
SIERRA NEVADA MOUNTAINS,
CALIFORNIA

DIAGRAM SHOWING
**AREAS AND ISOHYETES
OF THE
SUBDIVISIONS**

PREPARED UNDER THE DIRECTION OF MARSDEN MANSON, CITY ENGINEER
SAN FRANCISCO, CALIF. Jan. 1911.
Sheet 2





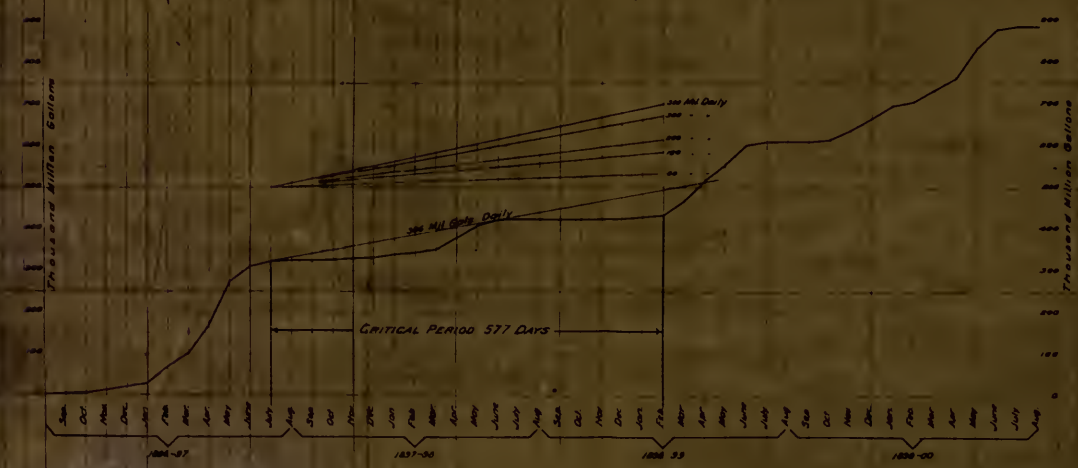
**EVAPORATION
AT LAKE ELEANOR**

Months	Seasons		
	1907-10	1910-11	1911-12
	Lakes		
Sep	5.60		
Oct	5.04	6.12	
Nov	4.72	5.76	
Dec	3.84	4.80	
Jan	3.20	4.00	
Feb	2.88	3.60	
Mar	2.56	3.20	
Apr	2.24	2.88	
May	1.92	2.56	
June	1.60	2.24	
July	1.28	1.92	
Aug	1.04	1.60	
Total	31.20		

**TABLE OF ALL KNOWN DEVELOPED AND POSSIBLE STORAGE RESERVOIRS
GIVING COSTS OF DAMS**

Name	Elevation	Height of Dam	Storage Mil Gals	Cost of Dam Dollars	Cost per Mil Gals Dollars	Area of Water Surface	Remarks
Redwood Pond Res	2200	325'	20800	4,560,000	218.00	544 A	S.R. Co. & S.D. Co. J.
Mt. Nevers Park	2800	325'	23200	5,710,000	246.00	736	
S.F. Col. & Electric Reservoir	5,000	400'	4000	800,000	100.00	949	S.F. Co. & Electric Co.
Clear Lake	2400	185'	7500	1,125,000	150.00	600	
Mt. Nevers Park Res	3380	(300')	10,700	3,340,000	300.00	440	
Total			80850	15,540,000		5279 A	

Note: The lower water rights in addition to the Wood Bridge Canal Rights are:
 10 mil gals daily to Jackson and vicinity from Arroyo Canal
 10 " " " to Tolans Ditch
 10 " " " to Mokelumne Hill and Campa Seco Ditch
 10 " " " to Grange Ditch
 36 mil gals Daily



BOARD OF PUBLIC WORKS
 CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA.
**MASS DIAGRAM OF THE WATER AVAILABLE AT
 ELECTRA
 AFTER ALLOWING FOR WOOD BRIDGE CANAL RIGHTS
 FROM DRAINAGE AREA OF THE
 MOKELUMNE RIVER
 TRIBUTARY TO ELECTRA
 537 Sq MILES.**
 PREPARED UNDER THE DIRECTION OF MARSDEN MANSON CITY ENGINEER
 BY M. J. BARTELL
 MARCH, 1912.

Note: The Wood Bridge Canal Rights are about 62 Sec. ft. of the natural flow of the stream near Clements.



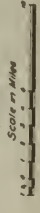
BOARD OF PUBLIC WORKS
CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA.

REGIONAL MAP

SHOWING THE
LOCATION OF CONDUITS

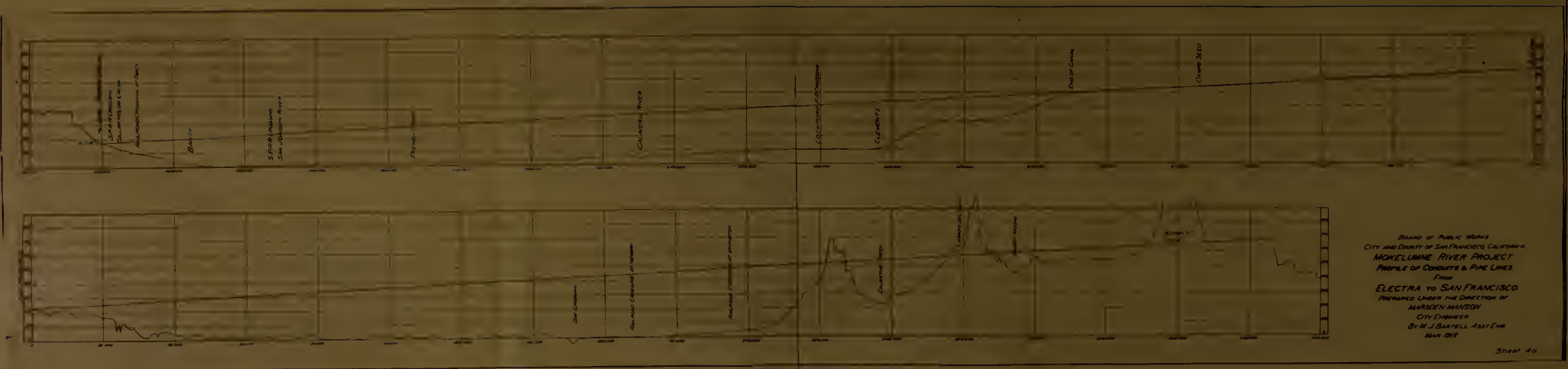
FROM DIFFERENT SOURCES OF WATER SUPPLY FOR
CITY OF SAN FRANCISCO.

PREPARED UNDER THE DIRECTION OF MARSDEN MANSON CITY ENGINEER.
JAN. 1912.

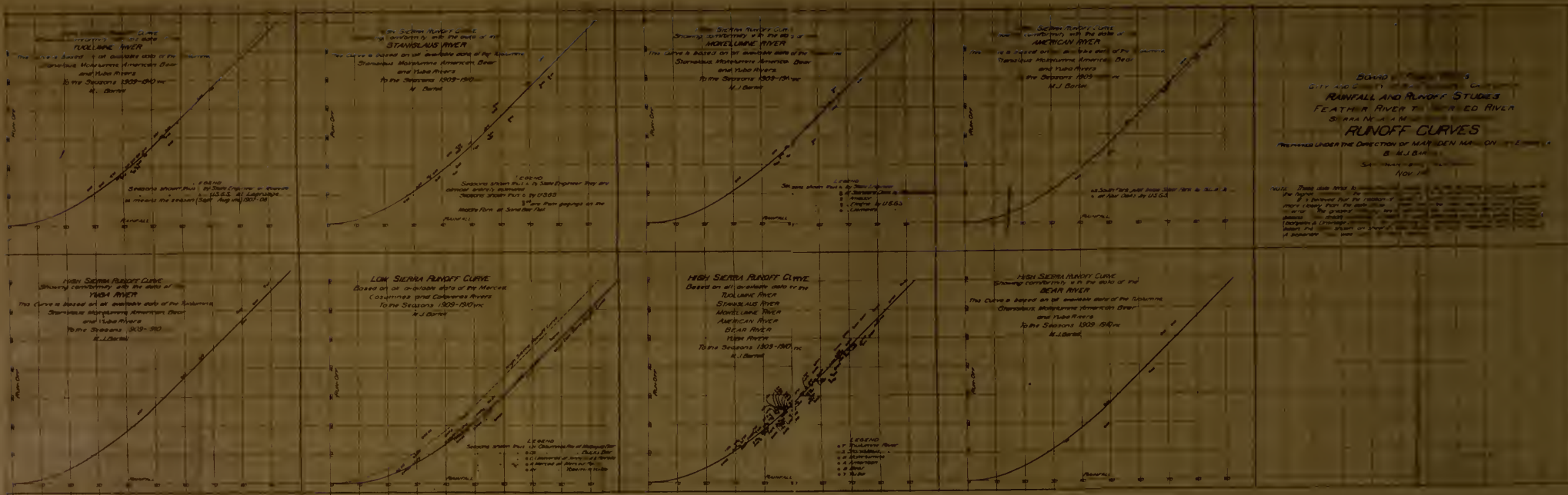


LEGEND

DESIGN OF ROUTE	ROUTE	PROPOSED BY	REMARKS
①	Tuolumne River Project	Grimes & Mc...	
②	Stonewall	...	
③	Abbot	...	
④	San Francisco	...	
⑤	Mount Diablo Project	...	Source of 18364
⑥	Alameda District Project	...	Source of 18363



BOARD OF PUBLIC WORKS
 CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA
 MOKELUMNE RIVER PROJECT
 PROFILE OF CONDUITS & PIPE LINES
 FROM
 ELECTRA TO SAN FRANCISCO
 PREPARED UNDER THE DIRECTION OF
 MARSHEN HANSON
 CITY ENGINEER
 BY M. J. BARTLETT, ASSIST. ENG.
 MAY 1912



15780
No. 15780
COURT, DIST. DIST. OF CALIF.
Exhibit 22
Clerk

